

I. Scope of Rules—One Form of Action
F.R.CIV.P. 1. Scope and Purpose of Rules

LRCiv 1.1

COURT CALENDAR MANAGEMENT

(a) **Non-Trial Additions/Deletions to Calendars By Counsel or Unrepresented Parties.** Any additions or deletions to the Court calendars other than for trials shall require 48 hours notice unless otherwise directed or scheduled by the Court.

(b) **Notice of Conflict.** Upon learning of a scheduling conflict between different courts within the District of Arizona, or between the United States District Court and the Arizona State Courts, counsel has a duty to promptly notify the Judges involved in order that the conflict may be resolved. Such notice shall be in writing, with a copy provided to all counsel and conflicted courts.

(c) **Inter-Division Conflicts.** Conflicts in scheduling between divisions of this Court may be governed by local rule or general order.

(d) **Resolution of Conflicts.** Upon being advised of a scheduling conflict, the Judges involved shall, if necessary, confer personally or by telephone in an effort to resolve the conflict. While neither the United States District Court nor any Arizona Court has priority in scheduling, the following factors should be considered in resolving the conflict:

- (1) The nature of the cases as civil or criminal, and the presence of any speedy trial problems;
- (2) the length, urgency, or relative importance of the matters;
- (3) a case which involves out-of-town witnesses, parties or counsel;
- (4) the age of the cases;

- (5) the matter which was set first;
- (6) any priority granted by rule or statute;
- (7) any other pertinent factor.

F.R.CIV.P. 2. One Form of Action
(NO LOCAL RULE)

**II. Commencement of Action; Service of Process, Pleadings,
Motions, and Orders**

F.R.CIV.P. 3. Commencement of Action

LRCiv 3.1

CIVIL COVER SHEET

(a) The Clerk is authorized and instructed to require a complete and executed AO form JS-44, Civil Cover Sheet, which shall accompany each civil case to be filed.

(b) Persons filing civil cases who are at the time of such filing in custody of Civil, State, or Federal institutions, and persons filing civil cases *pro se*, are exempted from the foregoing requirements.

LRCiv 3.2

DOCKETING

(a) **Case Numbering.** The number to be assigned to each case shall initially be placed thereon by the Clerk. Such number shall also include the designation "CR" for criminal cases and "CV" for civil cases, followed by the last two digits of the calendar year in which each case is filed; the number of the case in the order filed during each calendar year, followed by the designation of the division where filed, and ending with the initials of the Judge to whom the case is assigned. Phoenix and Prescott cases shall be numbered together, differentiated only by the designation "PHX" for Phoenix cases and "PCT" for Prescott cases. Tucson cases shall be designated "TUC" for Tucson cases.

CV-98-1-PHX-RCB CR-98-1-PCT-EHC

CV-98-2-TUC-ACM CR-98-2-PHX-PGR

CV-98-3-PCT-ROS CR-98-3-TUC-JMR

(b) **Docketing Format.** Each document which is separately filed by the Clerk in a particular case shall be sequentially numbered by the Clerk on the first page of the document and shall be docketed by that number.

LRCiv 3.3

ACTIONS IN FORMA PAUPERIS

(a) All actions sought to be filed *in forma pauperis*, pursuant to 28 U.S.C. §1915, shall be accompanied by an affidavit of inability to pay costs or give security. This affidavit shall consist of a declaration in support of request to proceed *in forma pauperis*. This declaration shall contain the following:

(1) A statement as to current employment including the amount of wages or salary per month and the name and address of the current employer.

(2) A statement, if not currently employed, as to the date of last employment and the amount of wages or salary per month which was received.

(3) A statement as to any money received within the past twelve months from any of the following sources:

- (A) Business, profession, or self-employment;
- (B) Rent payments, interest, or dividends;
- (C) Pensions, annuities, or life insurance payments;
- (D) Gifts or inheritances; and
- (E) Any other source.

The statement shall include a description of each source of money and the amount of money received from each source during the past twelve months.

(4) A statement as to any cash in possession and as to any money in a financial institution, including checking, savings, and any other accounts. The statement shall include any money available to the declarant.

(5) A statement as to any real estate, stocks, bonds, notes, automobiles, investments, or other valuable

property (excluding ordinary household furnishings and clothing). The statement shall describe the property and state its approximate value.

(6) A statement as to all persons who depend upon the declarant for support. The statement shall include the relationship of the dependents and the amount contributed toward their support.

(7) A statement that, because of poverty, there is an inability to pay the costs of the proceeding or given security therefore, and the declarant's belief that the declarant is entitled to relief.

(b) In actions by persons who are incarcerated, this declaration must contain a certification, executed by an authorized officer of the institution, as to any amount contained in any of declarant's accounts at the institution.

This declaration shall be executed under penalty of perjury.

LRCiv 3.4

COMPLAINTS BY INCARCERATED PERSONS

(a) **Filing Requirements.** All complaints and applications to proceed in forma pauperis by incarcerated persons shall be signed and legibly written or typewritten on forms approved by the Court and in accordance with the instructions provided with the forms unless the assigned District Judge or Magistrate Judge, in his or her discretion, finds that the complaint or application is understandable and that it conforms with federal and local requirements for actions filed by incarcerated persons. Copies of the forms and instructions shall be provided by the Clerk upon request. The assigned District Judge or Magistrate Judge may strike or dismiss complaints or applications which do not conform substantively or procedurally with federal and local requirements for actions filed by incarcerated persons.

(b) **Assignment of Judicial Officer.** Once a complaint by an incarcerated person is assigned to a District Judge or Magistrate Judge, any future pleadings lodged or filed by the incarcerated person shall be assigned to the same District Judge or Magistrate Judge to whom the earlier case was assigned, unless otherwise ordered by the Court.

LRCiv 3.5

WRITS OF HABEAS CORPUS

AND MOTIONS PURSUANT TO 28 U.S.C. § 2255

(a) **Filing Requirements.** Petitions for writs of habeas corpus pursuant to 28 U.S.C. § 2254 and 28 U.S.C. § 2241, motions to vacate sentence pursuant to 28 U.S.C. § 2255, and applications to proceed in forma pauperis shall be signed and legibly written or typewritten on forms approved by the Court and in accordance with the instructions provided with the forms unless the assigned District Judge or Magistrate Judge, in his or her discretion, finds that the petition or motion is understandable and that it conforms with federal and local requirements for such actions. Copies of the forms and instructions shall be provided by the Clerk upon request. The original and two (2) copies of the petition or motion shall be sent or delivered to the Clerk. The assigned District Judge or Magistrate Judge may strike or dismiss petitions, motions or applications which do not conform substantively or procedurally with federal and local requirements for such actions.

(b) **In Forma Pauperis Certification.** If a habeas corpus petitioner desires to prosecute the petition *in forma pauperis*, the petitioner shall file an application to proceed in forma pauperis on a form approved by the Court, accompanied by a certification of the warden or other appropriate officer of the institution in which the petitioner is confined as to the amount of money or securities on deposit to the petitioner's credit. If the petitioner has in excess of twenty-five dollars (\$25) on deposit, leave to proceed in forma pauperis will be denied and the petitioner must pay the filing fee.

(c) **Assignment of Judicial Officer.** Once a petition for a writ of habeas corpus is assigned to a District Judge or Magistrate Judge, any future pleadings lodged or filed by the prisoner shall be assigned to the same District Judge or Magistrate Judge to whom the earlier case was assigned, unless otherwise ordered by the Court. Motions pursuant to 28 U.S.C. §2255 will be assigned as provided for in Rule 4(a) of the Rules Governing Section 2255 Proceedings for the United States District Courts.

LRCiv 3.6

BANKRUPTCY APPEAL CASES

Bankruptcy Appeal Cases. Except with permission of the district court, the appellant's and appellee's opening briefs shall not exceed seventeen (17) pages, and reply briefs shall not exceed eleven (11) pages, exclusive of pages containing the table of contents, tables of citations, proof of service and any addendum containing statutes, rules, regulations or similar material.

LRCiv 3.7

REMOVAL TO FEDERAL COURT

A defendant or defendants desiring to remove any civil action or criminal prosecution from a state court shall file with the Clerk of Court a Notice of Removal, signed pursuant to Rule 11 of the Federal Rules of Civil Procedure. The notice will also contain an affirmative statement that a copy of the notice has been filed with the State Court Clerk. The party seeking the removal shall file with the district court all pleadings filed by all parties with the state court prior to the notice of removal. In addition, to the civil cover sheet, AO Form JS-44, the removing party shall submit a "Supplemental Civil Cover Sheet for Cases Removed from Another Jurisdiction," to accompany each Notice of Removal.

LRCiv 3.8

ASSIGNMENT OF CASES; CIVIL

(a) **Assignment of Civil Cases.** Within each division, the civil cases, when filed, shall be assigned among the Judges of the division by the Clerk (or by a deputy designated by the Clerk) by automated random selection and in a manner so that neither the Clerk nor any parties or their attorneys shall be able to make a deliberate choice of a particular Judge for a particular case. The cases so assigned shall remain with the Judge to whom assigned unless otherwise ordered by the Court. Unless otherwise ordered by the Court, the Clerk shall assign each civil case to a District Judge or a Magistrate Judge by automated random selection, except that when preliminary injunctive relief is requested by motion, the Clerk shall assign the case to a District Judge. In the event the action is assigned to a Magistrate Judge, each party shall execute and file within 20 days of its appearance either a written consent to the exercise of authority by the Magistrate Judge under 28 U.S.C. § 636(c), or a written election to have the action reassigned to a District Judge. Each party shall indicate his or her consent or election on the form provided by the Clerk. Prior to the completed consent or election forms being received by the Clerk of the Court, the assigned Magistrate Judge shall act pursuant to 28 U.S.C. § 636(b)(1)(A). Any motion submitted by a party before that party has filed an election form may be stricken or deferred by the Court. In the event one or more parties elect to have a case heard by a District Judge, the case shall be reassigned to a District Judge. After one or more consents to a Magistrate Judge have been filed with the Clerk and until such time as an election is made by any party for assignment to a

District Judge, the Magistrate Judge shall continue to act pursuant to 28 U.S.C. § 636(c)(1) even though all parties have not been served or have not filed their appearances. Consent to a Magistrate Judge's authority does not constitute a waiver of any jurisdictional defense unrelated to the grant of authority under 28 U.S.C. § 636(c).

(b) **Temporary Reassignment of Cases.** A case assigned to a particular District Judge may be temporarily reassigned to another District Judge, if the District Judge to whom the case is assigned is unavailable and an exigency exists which requires prompt action by the Court. The case will be reassigned by the Clerk (or by a deputy designated by the Clerk) to a District Judge by automated random selection among the District Judges then assigned to service in the District of Arizona, for the limited purpose of hearing or determining the matter that is the subject of the exigency.

F.R.CIV.P. 4. Summons

(NO LOCAL RULE)

F.R.CIV.P. 4.1. Service of Other Process

(NO LOCAL RULE)

**F.R.CIV.P. 5. Service and Filing of Pleadings and Other
Papers**

LRCiv 5.1

PLACES FOR FILING

(a) **Clerk's Offices; Place of Filing.** Permanent office of the Clerk shall be maintained at Phoenix and at Tucson and shall be open during regular business hours, as designated and posted by the Clerk of Court, on each day except Saturdays, Sundays, and legal holidays enumerated in Fed.R.Civ.P. 77(c), when the offices are closed unless otherwise ordered by the Court. All files and records of the Phoenix and Prescott divisions shall be kept at Phoenix, and all files and records of the Tucson division shall be kept at Tucson. Unless otherwise ordered by the Court, all filings for the Phoenix and Prescott divisions shall be made in Phoenix, and all filings for the Tucson division shall be made in Tucson. In cases where the cause of action has arisen in more than one county, the plaintiff may elect any of the divisions appropriate to those counties for filing and trial purposes, although the Court reserves the right to assign any cases for trial elsewhere in the District at its discretion.

(b) **Writs of Habeas Corpus.** Petitions for writs of habeas corpus by a person in State custody under 28 U.S.C. §2254, notwithstanding the requirements of Rule 77.1(b), Local Rules of Civil Procedure shall be filed in the division which includes the County in which the judgment of conviction was entered, and not necessarily in the division where presently held in custody.

LRCiv 5.2

FILING OF DISCOVERY AND DISCLOSURE NOTICES

A "Notice of Service" of the disclosures and discovery requests and responses listed in Rule 5(d) of the Federal Rules of Civil Procedure must be filed within a reasonable time after service of such papers.

LRCiv 5.3

STATUTORY COURT

Where, pursuant to law, an action must be heard by a District Court composed of three Judges, the procedure to be followed by counsel in filing pleadings and submitting briefs will be as follows:

(a) **Pleadings Filed in Quadruplicate.** All pleadings are to be filed with the Clerk in quadruplicate, the original becoming part of the file and the three copies to be distributed by the Clerk to the members of the statutory Court.

(b) **Briefs Filed in Quadruplicate.** Briefs are to be submitted in quadruplicate and, unless otherwise directed by the Court, they are to be delivered to the Clerk for distribution to the members of the statutory Court.

LRCiv 5.4

FILING; COPY FOR JUDGE

Except for routine discovery notices, a clear, legible copy of every pleading or other document filed shall accompany each original pleading or other document filed with the Clerk for use by the District Judge or Magistrate Judge to whom the case is assigned and additional copies for each Judge in three-judge cases.

NOTE: Amended pursuant to General Order 05-17, dated June 29, 2005, and effective August 1, 2005.

LRCiv 5.5

ELECTRONIC FILING

(a) **Electronic Case Filing Administrative Policies and Procedures Manual.** The Clerk of Court is authorized to develop, publish and implement an Electronic Case Filing Administrative Policies and Procedures Manual for the District of Arizona (Administrative Manual).

(b) **Filing of Documents Electronically.** The Court will accept for filing documents submitted, signed or verified by electronic means consistent with these rules and the Administrative Manual. Filing of documents electronically in compliance with these rules and the Administrative Manual will constitute filing with the Court for purposes of Rule 5(e) of the Federal Rules of Civil Procedure.

(c) **Scope of Electronic Filing.** All cases filed in this Court will be maintained in the Electronic Case Filing (ECF) System in accordance with these rules and the Administrative Manual.

(d) **Registered User Eligibility.** Attorneys admitted to the bar of this Court and attorneys and certified students permitted to practice in this Court under Local Rule 83.1(b) are eligible to become Registered Users of the ECF system. Unless the Court orders otherwise, parties appearing without an attorney shall not file documents electronically.

(e) **Registration.** Applicants shall register to file electronically in a form prescribed by the Clerk of Court.

(f) **Password Security.** Registered Users shall protect the security of their passwords and shall immediately notify the Clerk of Court if they learn that their password has been compromised.

(g) **Signatures.** The log-in and password required to submit documents to the ECF System constitute the Registered User's signature on all electronic documents filed with the Court for

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purposes of Rule 11 of the Federal Rules of Civil Procedure. Documents signed by an attorney shall be filed using that attorney's ECF log-in and password and shall not be filed using a log-in and password belonging to another attorney. No person shall knowingly permit or cause to permit a Registered User's password to be used by anyone other than an authorized agent of the Registered User.

(h) **Service of Electronic Filings.** Registration as an ECF user constitutes consent to the electronic service of all documents through the Court's transmission facilities for purposes of Rule 5(b)(2)(D) of the Federal Rules of Civil Procedure. Transmission of the Notice of Electronic Filing to a Registered User's e-mail address constitutes service of the hyperlinked document(s). Only the Notice of Electronic Filing, generated and transmitted by the ECF system, is sufficient to constitute electronic service of an electronically filed document. Non-registered users shall be provided notice of the filing by other means in accordance with the Federal Rules of Civil Procedure.

NOTE: Amended pursuant to General Order 05-17, dated June 29, 2005, and effective August 1, 2005.

F.R.CIV.P. 6. Time
(NO LOCAL RULE)

III. Pleadings and Motions

F.R.CIV.P. 7. Pleadings Allowed; Form of Motions

LRCiv 7.1

FORMS OF PAPERS

(a) **Title Page.** The following information shall be stated upon the first page of every document and may be presented for filing single-spaced¹:

(1) The name, address, e-mail address, State Bar Attorney number, telephone number, and optionally the fax number, of the attorney appearing for the party in the action or proceeding and whether the attorney appears for the plaintiff, defendant, or other party - in propria persona - shall be typewritten or printed in the space to the left of the center of the page and beginning at line one (1) on the first page. The space to the right of the center shall be reserved for the filing marks of the Clerk.

(2) The title of the Court shall commence on or below line six (6) of the first page.

(3) Below the title of the Court, there shall be inserted in the space to the left of the center of the paper the title of the action or proceeding. If the parties are too numerous for all to be named on the first page, the names of the parties only may be continued on the second or successive pages. All parties named in the case caption shall be separated by semicolons on any initial or amended complaint, petition, crossclaim, counterclaim, or third-party complaint. If the initial or amended complaint, petition, crossclaim, counterclaim, or third-party complaint applies to a

1 A sample form is provided in Appendix C.

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consolidated action, the affected case number(s) must appear below the number of the established "lead", or lowest-numbered case. For all other papers filed in civil or criminal cases, it is sufficient to state the name of the first party on each side with an appropriate indication of the other parties, as provided by Rule 10(a), Federal Rules of Civil Procedure. All counsel/litigants are required to use proper capitalization and spacing to denote the correct spelling of the party names. In the space to the right of the center there shall be inserted (A) the number of the action or proceeding; (B) a brief description of the nature of the document, including demand for trial by jury if made in the document; and (C) mention of any notice of motion or affidavits or memorandum in support.

(b) Pleadings and Other Papers.

(1) All pleadings and other papers shall be submitted on unglazed paper 8 ½ inches by 11 inches and shall be signed as provided in Rule 11 of the Federal Rules of Civil Procedure. Documents intended for filing shall be presented to the Clerk's Office without being folded or rolled and shall be kept in flat files. The body of all documents shall be typed double-spaced and shall not exceed 28 lines per page; they shall not be single-spaced except for footnotes and indented quotations. All pleadings, motions and other original papers filed with the Clerk shall be in a fixed-pitch type size no smaller than ten (10) pitch (10 letters per inch) or in a proportional font size no smaller than 13 point. The left margin shall not be less than 1 ½ inches and the right margin shall not be less than ½ inch. All documents presented

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for filing shall be stapled in the upper left-hand corner. Documents which are too large for stapling should be bound with a metal prong fastener at the top, center of the document. Documents filed by incarcerated persons are exempt from the stapling and fastening requirements.

(2) In civil cases when a party requests specific relief, except for dismissal or summary judgment pursuant to Federal Rules of Civil Procedure 12(b) or 56, the party must lodge with the Clerk a separate proposed order.

(3) Proposed orders prepared for the signature of a United States District Judge or a Magistrate Judge must be prepared on a separate document containing the heading data required by subparagraphs (a) (2) and (3) above as appropriate, and must not be included as an integral part of stipulations, motions, or other pleadings. The proposed order must not contain any information identifying the party submitting the order. Proposed orders submitted electronically must not contain a date or signature block. All other proposed orders must contain the following uniform signature block (Magistrate Judges should be adapted accordingly):

DATED this _____ day of _____, 20____.

(Judge's Name)

United States District Judge

(c) **Electronic Documents.** Documents submitted for filing in the ECF System shall be in a Portable Document Format (PDF). Documents which exist only in paper format shall be scanned into PDF for electronic filing. All other documents

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shall be converted to PDF directly from a word processing program (e.g., Microsoft Word® or Corel WordPerfect®), rather than created from the scanned image of a paper document.

(d) **Attachments to Pleadings and Memoranda.**

(1) Attachments. No copy of a pleading, exhibit or minute entry which has been filed in a case shall be attached to the original of a subsequent pleading, motion or memorandum of points and authorities.

(2) Incorporation by Reference. If a party desires to call the Court's attention to anything contained in a previous pleading, motion or minute entry, the party shall do so by incorporation by reference.

(3) Authorities Cited in Memoranda. Copies of authorities cited in memoranda shall not be attached to the original of any motion or memorandum of authorities.

(4) Attachments to Judge. Nothing herein shall be construed as prohibiting a party from attaching copies of pleadings, motions, exhibits, minute entries or texts of authorities to a copy of a motion or memorandum of points and authorities delivered to the District Judge or Magistrate Judge to whom the case has been assigned. Any such attachments or authorities provided to the District Judge or Magistrate Judge must also be provided to all other attorneys.

(5) Sanctions. In addition to any other sanctions, for violation of this Local Rule, the Court may order the removal of the offending document and charge the offending party or counsel such costs or fees as may be necessary to cover the Clerk's costs of filing, preservation, or storage.

NOTE: Amended pursuant to General Order 05-17, dated June 29, 2005, and effective August 1, 2005.

LRCiv 7.2

MOTIONS*

(a) **Motions Shall be in Writing.** All motions, unless made during a hearing or trial, shall be in writing and shall be made sufficiently in advance of trial to comply with the time periods set forth in this Local Rule and to avoid any delays in the trial.

(b) **Memorandum by Moving Party.** Upon any motion, the moving party shall serve and file with the motions papers a memorandum setting forth the points and authorities relied upon in support of the motion.

(c) **Responsive Memorandum.** The opposing party shall, unless otherwise ordered by the Court and except as otherwise provided by Rule 56 of the Federal Rules of Civil Procedure and Rules 12.1 and 56.1, Local Rules of Civil Procedure have ten (10) days after service in a civil or criminal case within which to serve and file a responsive memorandum.

(d) **Reply Memorandum.** The moving party, unless otherwise ordered by the Court, shall have five (5) days after service of the responsive memorandum to file a reply memorandum if that party so desires.

(e) **Length of Motions and Memoranda.** Unless otherwise permitted by the Court, a motion including its supporting memorandum, and the response including its supporting memorandum, each shall not exceed seventeen (17) pages, exclusive of attachments and any required statement of facts. Unless otherwise permitted by the Court, a reply including its supporting memorandum shall not exceed eleven (11) pages,

* The time periods prescribed in the Local Rules are to be computed in accordance with Rule 6, Federal Rules of Civil Procedure.

exclusive of attachments.

(f) **Oral Arguments.** Unless otherwise directed by the Court, a party desiring oral argument shall request it by placing "Oral Argument Requested" immediately below the title of such motion or the response to such motion. If oral argument is granted, notice shall be given in a manner directed by the Court.

(g) **Motions for Reconsideration.** No response to a motion for reconsideration or clarification and no reply to the response shall be filed unless ordered by the Court. Absent good cause shown, any motion for reconsideration shall be filed no later than ten (10) days after the filing of the Order that is the subject of the motion.

(h) **Telephone Argument and Conferences.** The Court may, in its discretion, order or allow oral argument on any motion or other proceeding by speaker telephone conference call, provided that all conversations of all parties are audible to each participant and the Court. Upon request of any party, such oral argument may be recorded by court reporter or other lawful method under such conditions as the Court shall deem practicable. Counsel shall schedule such calls at a time convenient to all parties and the Court. The Court may direct which party shall pay the cost of the call.

(i) **Briefs or Memoranda of Law; Effect of Non-Compliance.** If a motion does not conform in all substantial respects with the requirements of this Local Rule, or if the opposing party does not serve and file the required answering memoranda, or if counsel for any party fails to appear at the time and place assigned for oral argument, such non-compliance may be deemed a consent to the denial or granting of the motion and the Court may dispose of the motion summarily.

(j) **Discovery Motions.** No discovery motion will be considered or decided unless a statement of moving counsel is attached thereto certifying that after personal consultation and sincere efforts to do so, counsel have been unable to satisfactorily resolve the matter. Any discovery motion brought before the Court without prior personal consultation with the other party and a sincere effort to resolve the matter, may result in sanctions.

(k) **Motions to Compel.** With regard to motions to compel discovery brought pursuant to Rule 37(a)(2) of the Federal Rules of Civil Procedure, see Rule 37.1, Local Rules of Civil Procedure.

(l) **Pending Motions Notification.** Whenever any motion or other matter has been taken under advisement by a District Judge or Magistrate Judge for more than one hundred and eighty (180) days, the attorneys of record in the case shall inquire of the Court, in writing, as to the status of the matter, and shall do so every fourteen (14) days thereafter until the submitted matter has been decided.

LRCiv 7.3

MOTIONS/STIPULATIONS FOR EXTENSIONS OF TIME

(a) The time prescribed for the doing of any act may be enlarged by the Court. Such order must be made before the expiration of the time prescribed, except by motion where the failure to act was the result of excusable neglect. It shall be the duty of the party moving for an extension of time, whether by motion or stipulation, to disclose the existence of all previous extensions which have been granted concerning the matter for which an extension is sought. Immediately below the title of such motion or stipulation, there shall also be included a statement indicating whether it is the first, second, third, etc. requested extension, i.e.: "STIPULATION FOR EXTENSION OF TIME TO ANSWER (Second Request)."

(b) Except in all civil actions in which a party is an unrepresented prisoner, it is the duty of the moving party to state the position of each other party in all motions for extension of time. If the moving party's efforts to determine the position of any other party are unsuccessful, a statement to that effect must be included in the motion.

(c) **Stipulations to Extend Time.** Any stipulation for an extension of time is subject to the requirements prescribed in paragraphs (a) and (b) above.

LRCiv 7.4

FAILURE TO APPEAR

Where counsel are served with notice of hearing on any application for an order, the failure of such counsel to appear at the time and place named in the notice may be deemed a default in respect to that application.

F.R.CIV.P. 7.1. Disclosure Statement

LRCiv 7.1.1

CORPORATE DISCLOSURE STATEMENT

The disclosure statement required by Rule 7.1 of the Federal Rules of Civil Procedure and Rules 12.4(a)(1) and (2) of the Federal Rules of Criminal Procedure must be made on a form provided by the Clerk and must be supplemented if new information is obtained.

F.R.Civ.P. 8 General Rules of Pleading
(NO LOCAL RULE)

F.R.Civ.P. 9. Pleading Special Matters
(NO LOCAL RULE)

F.R.Civ.P. 10. Form of Pleadings
(NO LOCAL RULE)

F.R.Civ.P. 11. Signing of Pleadings, Motions, and Other
Papers; Representations to Court; Sanctions
(NO LOCAL RULE)

**F.R.CIV.P. 12. Defenses and Objections—When and How
Presented—By Pleading or Motion—Motion for Judgment on the
Pleadings**

LRCiv 12.1

MOTIONS TO DISMISS

(a) **Oral Arguments.** With regard to oral arguments on motions filed pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, see Rule 7.2(f), Local Rules of Civil Procedure.

(b) **Motions to Dismiss for Lack of Jurisdiction.** The time schedule for response, reply, and oral argument for motions to dismiss for lack of jurisdiction shall be the same as for motions for summary judgment, as set forth in Rule 56.1, Local Rules of Civil Procedure.

F.R.CIV.P. 13. Counterclaim and Cross-Claim
(NO LOCAL RULE)

F.R.CIV.P. 14. Third-Party Practice
(NO LOCAL RULE)

F.R.CIV.P. 15. Amended and Supplemental Pleadings

LRCiv 15.1

MOTIONS TO AMEND PLEADINGS

(a) Motions for Leave to Amend.

(1) Form; Attachments. A party who moves for leave to amend a pleading must attach a copy of the proposed amended pleading as an exhibit to the motion, which shall indicate in what respect it differs from the pleading which it amends, by bracketing or striking through the text to be deleted and underlining the text to be added.

(2) Lodging of Original Proposed Amendments. A party who moves for leave to amend a pleading, or who otherwise seeks to amend a pleading by leave of court including by stipulation and order, must lodge with the Clerk of Court an original of the proposed amended pleading. The original must not be physically attached or made an exhibit to a motion to amend, a stipulation to amend, or any other pleading and must contain the original signature of the attorney or unrepresented party proposing the amendment. The amended pleading is not to incorporate by reference any part of the preceding pleading, including exhibits.

(3) Effective Date of Filing Amendments; Service. The entry of the order granting leave to amend the pleading constitutes the filing date of the amended pleading and the Clerk of Court shall file the lodged pleading once the order is entered. The filing date of the amended pleading always constitutes the act from which the time for service begins to run. Unless otherwise ordered by the Court, or when the amendment adds a new party, the party who amended shall serve the amended pleading within ten (10) days of the filing date of such pleading and file a certificate of service.

F.R.CIV.P. 16. Pretrial Conferences; Scheduling; Management
(NO LRCiv 16.1)

LRCiv 16.2

DIFFERENTIATED CASE MANAGEMENT

(a) Statement of Purpose and Scope of Authority.

Pursuant to the Civil Justice Reform Act, 28 U.S.C §471 *et seq.*, the United States District Court for the District of Arizona has, effective December 1, 1993, established a Differentiated Case Management ("DCM") system, which screens cases for complexity, assigns cases to specific tracks based on that complexity, and manages cases to disposition according to predetermined milestones established for respective tracks.

(b) Tracks.

(1) Expedited Track.

(A) Assignment.

(i) Cases are assigned to this track by the Clerk of Court based on nature of suit, and are those which usually are resolved on the pleadings. Expedited Track cases include:

Bankruptcy Appeals;

Social Security;

Student Loan, Veteran's Benefits, and
other recovery;

Forfeiture/Penalty actions;

Freedom of Information Act (FOIA) actions;

Office of Navajo and Hopi Indian

Relocation actions;

Summons and Subpoena Enforcement actions.

(ii) Other cases may be assigned to this track based on complexity. Such determination may be made either by the parties at filing, or by the Court at a

preliminary scheduling conference.

(iii) A case in a nature of suit listed in (i) above, but which may have more complex issues or facts, may likewise be assigned to another track.

(B) Management. A preliminary scheduling conference is not required; however, a scheduling order shall be issued.

(2) Prisoner Pro Se Track.

(A) Assignment. Cases are assigned to this track by the Clerk of Court based on nature of suit and are administered by the District's Prisoner Pro Se Office. Natures of suit include General Habeas Corpus cases, Motions to Vacate Sentence, Mandamus Petitions, and Prisoner Civil Rights actions, which include civil rights complaints lodged or filed by prisoners challenging the conditions of their confinement pursuant to 42 U.S.C. §1983, Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971), or otherwise, and all other civil rights claims relating to the investigation and prosecution of criminal matters or to correctional agencies and institutions in connection with their decisions or acts arising out of their custodial functions.

(B) Management. Prisoner Civil Rights Actions shall be managed according to the following deadlines. The service order shall include a scheduling order, setting:

(i) maximum date to effect service, pursuant to Rule 4 of the Federal Rules of Civil Procedure, or sixty (60) days from filing of service order, whichever is later;

(ii) discovery cutoff one-hundred fifty (150) days from the maximum service date determined according

to (i) above; and

(iii) dispositive motion or proposed pretrial order filing deadline one-hundred eighty (180) days from the maximum service date determined according to (i) above.

(3) Standard Track.

(A) Assignment. Cases which do not meet the criteria of the Expedited or Prisoner/Pro Se tracks, and are not determined complex, are assigned to this track.

(B) Management.

(i) A preliminary scheduling conference, pursuant to Rule 16 of the Federal Rules of Civil Procedure, shall be scheduled within one-hundred eighty (180) days of filing, and conducted by the assigned District Judge or his or her designee.

(ii) The scheduling order issued from this conference, in accordance with Rule 16(b) of the Federal Rules of Civil Procedure, shall include dates for filing a joint proposed pretrial order and conducting a pretrial conference. The trial date shall be set at the pretrial conference. If the assigned District Judge is unable to try the case on that date, the case shall be referred to the Chief Judge for reassignment to any available District Judge.

(4) Complex Track.

(A) Assignment. Complex cases are those which require extensive judicial involvement, and shall be so designated by the District Judge, counsel, and parties.

(B) Management. A preliminary scheduling conference shall be conducted before the assigned District Judge for all cases on this Complex track, and an initial scheduling order, in accordance with Rule 16(b) of the Federal

Rules of Civil Procedure, shall be issued following such conference.

(C) Multidistrict litigation. An attorney filing a complaint, answer, or other pleading involving a case which may involve multidistrict litigation (see 28 U.S.C. §1407), shall, with the filing of the pleading, file in writing with the Clerk of the Court and the Judge to whom the case has been assigned, a paper describing the nature of the case listing the title(s) and number(s) of any other related case(s) filed in this or other jurisdictions.

IV. Parties

F.R.CIV.P. 17. Parties Plaintiff and Defendant; Capacity
(NO LOCAL RULE)

F.R.CIV.P. 18. Joinder of Claims and Remedies
(NO LOCAL RULE)

F.R.CIV.P. 19. Joinder of Persons Needed for Just
Adjudication
(NO LOCAL RULE)

F.R.CIV.P. 20. Permissive Joinder of Parties
(NO LOCAL RULE)

F.R.CIV.P. 21. Misjoinder and Non-Joinder of Parties
(NO LOCAL RULE)

F.R.CIV.P. 22. Interpleader
(NO LOCAL RULE)

F.R.CIV.P. 23. Class Actions
(NO LOCAL RULE)

F.R.CIV.P. 23.1. Derivative Actions by Shareholders
(NO LOCAL RULE)

F.R.CIV.P. 23.2. Actions Relating to Unincorporated
Associations
(NO LOCAL RULE)

F.R.CIV.P. 24. Intervention

LRCiv 24.1

NOTIFICATION OF CLAIM OF UNCONSTITUTIONALITY

A party drawing in question the constitutionality of an act of Congress or of any state affecting the public interest shall forthwith, upon the filing of any pleading or other document which raises the question, notify in writing the District Judge or Magistrate Judge to whom the case has been assigned of the pendency of the question in any action, suit or proceeding in the district court in which the United States or a state or any agency, officer or employee thereof is not a party. If the case has not been assigned, the written notice shall be given to the Chief Judge. The notice shall state the title of the cause, a reference to the questioned statute sufficient for its identification, and the respect(s) in which it is claimed that the statute is unconstitutional. The purpose of the notice is to enable the Court to comply with the requirements of 28 U.S.C. §2403. this Local Rule does not affect any constitutional right timely asserted by a party.

F.R.CIV.P. 25. Substitution of Parties
(NO LOCAL RULE)

V. Depositions and Discovery

**F.R.CIV.P. 26. General Provisions Governing Discovery; Duty
of Disclosure**
(NO LOCAL RULE)

F.R.CIV.P. 27. Depositions Before Action or Pending Appeal
(NO LOCAL RULE)

F.R.CIV.P. 28. Persons Before Whom Depositions May Be Taken
(NO LOCAL RULE)

F.R.CIV.P. 29. Stipulations Regarding Discovery Procedure

LRCiv 29.1

DISCOVERY; EXTENSIONS OF TIME

(a) **Extensions of Time for Discovery.** Pursuant to the provisions of Rule 29, Federal Rules of Civil Procedure, all stipulations submitted to the Court for an order to extend time provided in Rules 33, 34 and 36, Federal Rules of Civil Procedure, for responses to discovery, shall set forth the reasons for such stipulation, including a statement as to whether or not a time for completion of discovery has been ordered by the Court.

F.R.CIV.P. 30. Depositions Upon Oral Examination
(NO LOCAL RULE)

F.R.CIV.P. 31. Depositions Upon Written Questions
(NO LOCAL RULE)

F.R.CIV.P. 32. Use of Depositions in Court Proceedings
(NO LOCAL RULE)

F.R.CIV.P. 33. Interrogatories to Parties

LRCiv 33.1

FORM OF INTERROGATORIES

(a) The propounding party shall prepare interrogatories so that the responding party can provide his or her response in an adequate blank space.

(b) The responding party shall complete all copies of the set served upon him or her, attach a verification and certificate of mailing, and serve one (1) copy of the set upon each separate counsel representation in the action.

(c) All responses to interrogatories which are not completed in accordance with paragraphs (a) and (b) above, shall restate the interrogatory or request for admission immediately before stating the responses.

F.R.CIV.P. 34. Production of Documents and Things and Entry
Upon Land for Inspection and Other Purposes
(NO LOCAL RULE)

F.R.CIV.P. 35. Physical and Mental Examinations of Persons
(NO LOCAL RULE)

F.R.CIV.P. 36. Requests for Admission

LRCiv 36.1

FORM OF REQUESTS FOR ADMISSIONS

The form of requests for admissions shall be the same as the form of interrogatories, as provided in Rule 33.1, Local Rules of Civil Procedure.

**F.R.CIV.P. 37. Failure to Make Disclosure or Cooperate in
Discovery; Sanctions**

LRCiv 37.1

MOTIONS TO COMPEL

(a) When a motion for an order compelling discovery is brought pursuant to Rule 37(a)(2) of the Federal Rules of Civil Procedure, the moving party shall set forth, separately from a memorandum of law, the following in separate, distinct, numbered paragraphs:

(1) the question propounded, the interrogatory submitted, the designation requested or the inspection requested;

(2) the answer, designation or response received;
and

(3) the reason(s) why said answer, designation or response is deficient.

The foregoing requirement shall not apply where there has been a complete and total failure to respond to a discovery request or set of discovery requests.

F.R.CIV.P. 39. Trial by Jury or by the Court

LRCiv 39.1

PROCEDURE AT TRIALS

(a) **Order of Trial by a Jury.** The trial by a jury shall proceed in the following order unless the Court otherwise directs:

(1) The plaintiff or his or her counsel may make a statement of the case.

(2) The defendant or his or her counsel may make a statement of the case, or may defer making such statement until after the close of the evidence on behalf of the plaintiff.

(3) Other parties admitted to the action or their counsel may make a statement of their cases to the jury, or they may defer making such statement until after the close of the evidence on behalf of the plaintiff and defendant. The statement of such parties shall be in the order directed by the Court.

(4) The plaintiff shall then introduce evidence.

(5) The defendant shall introduce evidence.

(6) The other parties, if any, shall then introduce evidence in the order directed by the Court.

(7) The parties may then introduce rebutting evidence on each side in the respective order above set forth in this Local Rule.

(b) **Opening Statement.** The opening statement to the jury shall be confined to a concise and brief statement of the facts which the parties propose to establish by evidence on the trial. Any party may decline to make such statement.

(c) **Prohibition Against Reading Pleadings.** Unless the Court permits, no party may read his or her pleadings to the

jury.

(d) **Order of Arguments.** The right to open and close the argument shall belong to the party who has the burden of proof as to the issues in the action. Where each of the parties has the burden of proof on one or more issues, the Court, in its discretion, shall determine the order of arguments. All arguments shall be subject to such time limitations as may be imposed by the Court.

(e) **Limit on Examination/Cross-Examination.** Only one (1) on each side may, unless the Court otherwise permits, examine or cross-examine a witness, argue a point, or make an argument to the jury.

LRCiv 39.2

COMMUNICATIONS WITH TRIAL JURORS

(a) **Before or During Trial.** Absent an order of the Court and except in the course of in-court proceedings, no one shall directly or indirectly communicate with or cause another to communicate with a juror, prospective juror, or member of such juror's or prospective juror's family before or during a trial.

(b) **After Trial.** Interviews with jurors after trial by or on behalf of parties involved in the trial are prohibited except on condition that the attorney or party involved desiring such an interview file with the Court written interrogatories proposed to be submitted to the juror(s), together with an affidavit setting forth the reasons for such proposed interrogatories, within the time granted for a motion for a new trial. Approval for the interview of jurors in accordance with the interrogatories and affidavit so filed will be granted only upon the showing of good cause. See Federal Rules of Evidence, Rule 606(b). Following the interview, a second affidavit must be filed indicating the scope and results of the interviews with jurors and setting out the answers given to the interrogatories.

(c) **Juror's Rights.** Except in response to a Court order, no juror is compelled to communicate with anyone concerning any trial in which the juror has been a participant.

F.R.CIV.P. 40. Assignment of Cases for Trial

LRCiv 40.1

COURT CALENDAR MANAGEMENT

With regard to Court Calendar Management, see Rule 1.1,
Local Rules of Civil Procedure.

LRCiv 40.2

CONTINUANCES AND NOTICE OF SETTLEMENT

(a) **Cases Set for Trial.** Cases that are set for trial on a day certain, but which are not reached on that day, shall retain their relative position on the calendar and shall be entitled to precedence on the next trial day over cases set for said last-mentioned day.

(b) **No Continuance.** After a case is set for pretrial or trial, it shall not be continued except as justice requires, and the Court may condition the continuance upon compliance with orders, including the payment of the expenses caused to the other parties and of jury fees incurred by the Court. A case may also be dismissed for want of prosecution if no showing is made that justice requires a continuance.

(c) **Payment of Jury Fees.** In the case of a civil jury trial where notice is not given in writing to the Clerk three (3) days before the trial is to begin that the case has been settled or otherwise disposed of, the Court may require the payment of one (1) days' jury fees by the party or parties responsible for the failure to give notice.

(d) **Duty to Inform Regarding Settlement.** When a case set for trial is settled out of Court, it shall be the duty of counsel to inform the Clerk and Court immediately.

F.R.CIV.P. 41. Dismissal of Actions

LRCiv 41.1

DISMISSAL FOR WANT OF PROSECUTION

Cases which have had no proceedings for six (6) or more months may be dismissed by the Court for want of prosecution. Notice shall be given to the parties that such action is contemplated, and a status hearing shall be scheduled where the parties may show good cause why such action should not be taken.

LRCiv 41.2

REFILING

Cases refiled after dismissal may, upon motion of any party, be reassigned to the District Judge to whom the case was previously assigned. Motions for reassignment shall be heard by the Chief Judge or designee.

F.R.CIV.P. 42. Consolidation; Separate Trials

LRCiv 42.1

RELATED CASES; CONSOLIDATION; SERVICE; ASSIGNMENT

(a) Related Cases.

(1) Whenever two or more cases are pending before different Judges and any party believes that such cases (A) arise from substantially the same transaction or event; (B) involve substantially the same parties or property; (C) involve the same patent, trademark, or copyright; (D) calls for determination of substantially the same questions of law; or (E) for any other reason would entail substantial duplication of labor if heard by different Judges, any party may file a motion to transfer the case or cases involved to a single Judge. The motion shall be filed in the case with the lowest case number and shall be heard by the Judge assigned to that case. The caption of the motion to transfer shall list the case number of that case, followed by a complete listing of the case numbers of all the cases to be considered for reassignment. In addition, a notice of filing motion to transfer, with a copy of the motion attached, shall be filed in each case to be considered for reassignment.

(2) **Consolidation.** A motion to consolidate pursuant to Rule 42(a), Federal Rules of Civil Procedure, shall contain the captions of all the cases sought to be consolidated, be filed in each case and be heard by the District Judge assigned the lowest case number.

(3) **Service.** Service of any motion to transfer filed under subparagraph(a)(1) or service of any motion to consolidate filed under subparagraph (a)(2) shall be made upon all parties and assigned Judges in such cases.

(4) **Assignment.** In determining the Judge to whom

the case or cases will be assigned pursuant to subparagraphs (a)(1) or (a)(2) above, the following factors may be considered: (A) whether substantive matters have been considered in a case; (B) which Judge has the most familiarity with the issues involved in the cases; (C) whether a case is reasonably viewed as the lead or principal case; or (D) any other factor serving the interest of judicial economy.

F.R.CIV.P. 43. Taking of Testimony

LRCiv 43.1

CONDUCT IN COURTROOM AND ENVIRONS

(a) Audio/video Recording.

(1) **Prohibited Activities.** All forms, means, and manner of capturing, recording, broadcasting, transmitting, and/or storing of anything by use of electronic, photographic, audio and/or visual means or devices are prohibited in all courtrooms and environs thereto during the course of, or in connection with, any judicial proceedings whether the Court is actually in session or not.

(2) **Exceptions.** A District, Magistrate, or Bankruptcy Judge may permit:

(A) the use of electronic or photographic devices for the presentation of evidence or the perpetuation of the record;

(B) the broadcasting, televising, recording or photographing of investitive, ceremonial, naturalization, or historically significant proceedings; and

(C) subject to the prohibitions contained in paragraph (a) above, the use of an unobtrusive hand-held dictating device by counsel or unrepresented parties for use in dictating notes or reminders during trial. It is not to be used to record any part of the proceedings.

(b) Computers, Cellular Phones, and Other Equipment.

Unless otherwise ordered by the Court, laptop computers, personal digital assistants (PDAs), and pagers may be used in the courtroom provided they emit no sound, and are not disruptive to the proceedings. Cellular phones are prohibited

from use in the courtroom. However, unless otherwise ordered by the Court, cellular phones may be utilized in the hallways, lobbies, and other areas of the environs. Any device which has the potential to emit sound or be disruptive to Court proceedings must be turned off or set on silent mode in the courtroom. The use of this equipment is permissible within a judge's chambers at the discretion of the judge. The use of any device described in this section or any other device for the purposes described in this Local Rule subsection (a)(1) is strictly prohibited.

(c) **Environs Defined.** Environs as used in this Local Rule means the Sandra Day O'Connor United States Courthouse in Phoenix including the entire building, parking lot and curtilage up to the edge of, but not including, the sidewalk; the Evo A. Deconcini United States Courthouse in Tucson including the entire building, parking lot and curtilage up to the edge of, but not including, the publicly dedicated sidewalk; the second floor, basement and that portion of the third floor occupied by the U.S. District Court in the United States Courthouse in Prescott; the entire first floor and that portion of the second floor occupied by the U.S. District Court and U.S. Pretrial Services in the AWD Professional Building, Flagstaff; the entire United States Courthouse in Yuma; the interior of the United States Courthouse at 230 N. First Avenue, Phoenix Arizona; and the interior of the James A. Walsh Courthouse, Tucson, Arizona. In addition to the foregoing, environs as used in this Local Rule also means any other building, parking lot, and curtilage up to the edge, but not including the publicly dedicated sidewalk, of any structure which is owned by the federal government and in which a United States District Court proceeding is held.

(d) **Interiors of Offices.** This Local Rule does not apply to the interiors of the following offices: U. S. Probation, U. S. Pretrial Services, Clerk's Office, U. S. Attorney's Office, the attorney lounges, and all private tenants.

(e) **Exemption for Court Reporting and Recording.** This Local Rule is not intended to prohibit recordings by a court reporter paid or appointed by the District Court or recordings prepared by Court personnel, where such recordings are for use as a court record only.

(f) **United States Marshal Service and General Services Administration Duties.** The United States Marshal Service (USMS) and the General Services Administration (GSA) will make reasonable efforts to promote safe and unobstructed public access to the courthouse during regular business hours. Whenever USMS or GSA in its discretion deems it necessary, or when they are ordered to do so by a Judge, USMS and GSA shall create and maintain by the placement of stanchions an ingress/egress corridor extending from the front door of the courthouse to the sidewalk. The corridor shall include the wheelchair access ramp. The corridor shall be deemed an extension of the doorway and remain unobstructed. Notwithstanding the provisions of Paragraph (a), USMS or GSA may designate a "media access area" on outdoor courthouse property in which the use of cameras and other audio and video recording equipment is permitted.

F.R.CIV.P. 44. Proof of Official Record
(NO LOCAL RULE)

F.R.CIV.P. 44.1. Determination of Foreign Law
(NO LRCiv 44.1.1)

F.R.CIV.P. 45. Subpoena
(NO LOCAL RULE)

F.R.CIV.P. 46. Exceptions Unnecessary
(NO LOCAL RULE)

F.R.CIV.P. 47. Selection of Jurors

LRCiv 47.1

TRIAL JURIES

The jury in all civil cases shall be impanelled in accordance with Rules 47 and 48 of the Federal Rules of Civil Procedure. Each side shall exercise its peremptory challenges simultaneously and in secret. The Court shall then designate as the jury the persons whose names appear first on the list.

F.R.CIV.P. 48. Number of Jurors—Participation in Verdict
(NO LOCAL RULE)

F.R.CIV.P. 49. Special Verdicts and Interrogatories
(NO LOCAL RULE)

F.R.CIV.P. 50. Judgment as a Matter of Law in Jury Trials;
Alternative Motion for New Trial; Conditional Rulings
(NO LOCAL RULE)

**F.R.CIV.P. 51. Instructions to Jury; Objections; Preserving
a Claim of Error**

LRCiv 51.1

JURY INSTRUCTIONS

(a) **Proposed Jury Instructions.** Proposed instructions for the jury shall be presented to the Court at the opening of the trial unless otherwise directed by the Court; but the Court, in its discretion, may at any time prior to the opening of the argument, receive additional requests for instructions on matters arising during the trial. The requested instructions shall be properly entitled in the cause, distinctly state by which party presented, and shall be prepared in accordance with Rule 7.1(b), Local Rules of Civil Procedure. They shall be numbered consecutively and contain not more than one (1) instruction per page. Each requested instruction shall be understandable, brief, impartial, free from argument, and shall embrace but one (1) subject, and the principle therein stated shall not be repeated in subsequent requests.

(b) **Failure to Conform.** A willful failure to conform to these requirements in the manner of proposing instructions will, in the discretion of the Court, be deemed sufficient ground for their refusal.

(c) **Citations of Authorities.** All instructions requested of the Court shall be accompanied by citations of authorities supporting the proposition of law stated in such instructions.

(d) **Copies Served on Other Parties.** At the time of presenting the instructions to the Court, a copy shall be served upon the other parties.

(e) **Objections.** Objections to an instruction for the jury, or a refusal to give as a part of such jury instructions

requested in writing, shall be made out of the hearing of the jury and shall be noted by the Clerk in the minutes of the trial or by the reporter if one is in attendance.

**F.R.CIV.P. 52. Findings by the Court; Judgment on Partial
Findings**

LRCiv 52.1

FINDINGS

In all actions in which findings are required, the prevailing party shall, unless the Court otherwise directs, prepare a draft of the findings and conclusions of law within five (5) days after the rendition of the decision of the Court if the decision was in the presence of counsel, and otherwise within five (5) days after notice of the decision. The draft of the findings and conclusions of law shall be filed with the Clerk and served upon the adverse party. The adverse party shall within five (5) days thereafter file with the Clerk, and serve upon his or her adversary, such proposed objections, amendments, or additions to the findings as he may desire. The findings shall thereafter be deemed submitted and shall be settled by the Court and shall then be signed and filed. No judgments shall be entered in actions in which findings of fact and conclusions of law are required until the findings and conclusions have been settled and filed. A failure to file proposed findings of fact and conclusions of law and to take the necessary steps to procure the settlement thereof may be grounds for dismissal of the action for want of prosecution or for granting judgment against either party.

F.R.CIV.P. 53. Masters

LRCiv 53.1

DUTIES OF MAGISTRATE JUDGES; SPECIAL MASTER

(a) Subject to the Constitution and laws of the United States, the full-time Magistrate Judges in the District of Arizona shall perform the following duties:

(1) Serve as a Special Master in appropriate civil cases in accordance with 28 U.S.C. §636 (b) (2) and Rule 53 of the Federal Rules of Civil Procedure. Upon the consent of the parties, a Magistrate Judge may be designated by a District Judge to serve as a Special Master in any civil case notwithstanding the limitations of Rule 53(b) of the Federal Rules of Civil Procedure.

LRCiv 53.2

REVIEW OF SPECIAL MASTER REPORTS (28 U.S.C. §636 (B) (2) (A))

Any party may seek review of, or action on, a special master report filed by a Magistrate Judge in accordance with the provisions of Rule 53(e) of the Federal Rules of Civil Procedure.

VII. Judgments

F.R.CIV.P. 54. Judgments; Costs

LRCiv 54.1

COSTS: SECURITY FOR, TAXATION, PAYMENT

(a) **Procedure for Filing Bill of Costs.** Costs shall be taxed as provided in Rule 54(d), Federal Rules of Civil Procedure. A party entitled to costs shall, within ten (10) days after the entry of final judgment, unless time is extended under Rule 6(b), Federal Rules of Civil Procedure, file with the Clerk of Court and serve upon all parties, a bill of costs on a form provided by the Clerk. This bill of costs shall include a memorandum of the costs and necessary disbursements, so itemized that the nature of each can be readily understood, and, where available, documentation of requested costs in all categories must be attached. The bill of costs shall be verified by a person acquainted therewith.

(b) **Objections, Appearance Not Required.** Within ten (10) days after service of the bill of costs, a party objecting to any cost item may file with the Clerk and serve itemized objections in writing, presenting any affidavits or other evidence he or she has in connection with the costs and the grounds for the objection. Once the ten (10) day objection period has expired, the Clerk shall have thirty (30) days to tax the costs and allow such items as are properly allowable. In exceptional cases a party may request, by written motion, that a taxation hearing with parties present be held before the Clerk. The Clerk, on his or her own motion, may also order the parties to appear for a taxation hearing. In the absence of objection, any item listed may be taxed in the discretion of the Clerk. The Clerk shall thereupon docket and include the costs in the judgment. Notice of the Clerk's

taxation shall be given by mailing a copy of the taxation order to all parties in accordance with Rule 5, Federal Rules of Civil Procedure. The taxation of costs thus made shall be final unless modified on review by the Court on motion served within five (5) days thereafter, pursuant to Rule 54(d), Federal Rules of Civil Procedure.

(c) **Security.** In every action in which the plaintiff was not a resident of the District of Arizona at the time suit was brought, or, having been so, afterwards removed from this District, an order for security for costs may be entered upon application therefor within a reasonable time upon notice. In default of the entry of such security at the time fixed by the Court, judgment of dismissal shall be entered on motion.

(d) **Prevailing Party Entitlement to Costs.** The party entitled to costs shall be the prevailing party. Generally, a party in whose favor judgment is rendered is the prevailing party. The prevailing party need not succeed on every issue to be entitled to costs. Upon entry of judgment on a motion for summary judgment, the party requesting the summary judgment is the prevailing party. The Court will not determine the party entitled to costs in actions terminated by settlement; parties must reach agreement on taxation of costs, or bear own costs.

(e) **Taxable items.**

(1) Clerk's Fees and Service Fees. Clerk's fees (see 28 U.S.C. §1920), and service fees are allowable by statute.

(2) Fees Incident to Transcripts - Trial Transcripts. The cost of the originals of transcripts of trials or matters prior or subsequent to trial, is taxable at the rate authorized by the judicial conference when either

requested by the Court, or prepared pursuant to stipulation. Mere acceptance by the Court of a copy does not constitute a request. Copies of transcripts for counsel's own use are not taxable in the absence of a special order of the Court.

(3) Deposition Costs. The reporter's charge for the original deposition and copy is taxable whether or not the same be actually received into evidence, or whether or not it is taken solely for discovery. The cost of obtaining a copy of a deposition by parties in the case other than the one taking the deposition is also taxable. The reasonable expenses of the deposition reporter and a notary presiding at the taking of the depositions are taxable, including travel and subsistence. Counsel's fees, expenses in arranging for and attending the taking of a deposition are not taxable. Fees for the witness at the taking of a deposition are taxable at the same rate as for attendance at trial. The witness need not be under subpoena. A reasonable fee for a necessary interpreter at the taking of a deposition is taxable.

(4) Witness Fees, Mileage and Subsistence. The rate for witness fees, mileage and subsistence are fixed by statute (see 28 U.S.C. §1821). Such fees are taxable even though the witness does not take the stand, provided the witness is in attendance at the Court. Such fees are taxable even though the witness attends voluntarily upon request and is not under subpoena. Taxable transportation expenses shall be based on the most direct route at the most economical rate and means reasonably available to the witness. Witness fees and subsistence are taxable only for the reasonable period during which the witness is within the district. No party shall receive witness fees for testifying in his or her own behalf, but this shall not apply where a party is subpoenaed to attend

Court by the opposing party. Witness fees for officers of a corporation are taxable if the officers are not defendants and recovery is not sought against the officers individually. Fees for expert witnesses are not taxable in a greater amount than that statutorily allowable for ordinary witnesses. Allowance fees for a witness being deposed shall not depend on whether or not the deposition is admitted into evidence.

(5) Exemplification and Copies of Papers. The reasonable cost of copies of papers necessarily obtained from third-party records custodians is taxable. The reasonable cost of documentary exhibits admitted into evidence at hearing or trial is also taxable, including the provision of additional copies for the Court and opposing parties. The cost of copies submitted in lieu of originals because of the convenience of offering counsel or his or her client are not taxable. All other copy costs are not taxable except by prior order of the Court.

(6) Maps, Charts, Models, Photographs, Summaries, Computations and Statistical Summaries. The cost of maps and charts are taxable if they are admitted into evidence. The cost of photographs, 8" X 10" in size or less, are taxable if admitted into evidence, or attached to documents required to be filed and served on opposing counsel. Enlargements greater than 8" X 10" are not taxable except by prior order of the Court. The cost of models is not taxable except by prior order of the Court. The cost of compiling maps, summaries, computations, and statistical comparisons is not taxable.

(7) Interpreter Fees. The reasonable fee of a competent interpreter is taxable if the fee of the witness involved is taxable. The reasonable fee of a competent translator is taxable if the document translated is

necessarily filed, or admitted into evidence, or is otherwise taxable.

(8) Docket Fees. Docket fees and costs of briefs are taxable pursuant to 28 U.S.C. §1923. Docket fees may be awarded only when the United States is the prevailing party.

(9) Removed Cases. Fees paid to the Clerk of the State Court prior to removal are taxable in this Court.

(10) Other items may be taxed with prior Court approval.

LRCiv 54.2

ATTORNEYS' FEES AND RELATED NON-TAXABLE EXPENSES

(a) **Scope.** This Local Rule applies to claims for attorneys' fees and related non-taxable expenses made in cases assigned to the Standard Track or Complex Track of the local rule governing Differentiated Case Management. If a final judgment, including a judgment made under Rule 54(b), Federal Rules of Civil Procedure, does not determine the propriety and the amount of attorneys' fees authorized by statute or by contract, or if the court does not establish other procedures for determining such fees, the procedures set forth in this Local Rule shall apply. This Local Rule does not apply to claims for attorneys' fees and related non-taxable expenses which may be recoverable as an element of damages or to claims for attorneys' fees and related expenses for violations of the Federal Rules of Civil Procedure or under 28 U.S.C. § 1927. The provisions of this Local Rule also do not apply to any motion which may be filed after the entry of a default judgment or by court-appointed counsel in a habeas corpus matter.**

(b) **Time for Filing.** Where recovery of attorneys' fees and related non-taxable expenses are sought against the United States, the motion and supporting memorandum of points and authorities must be filed in accordance with the time limits set forth in Rule 54(d)(2)(B), Federal Rules of Civil Procedure and 28 U.S.C. § 2412(d)(1)(B). In all other cases, this paragraph (b) shall apply.

(1) Motion. Unless otherwise provided by statute or court order entered in an individual case, the party seeking

** Although civil in nature, writs of habeas corpus are generally applicable to prior criminal proceedings.

an award of attorneys' fees and related non-taxable expenses shall file and serve a motion for award of attorneys' fees and related non-taxable expenses within fourteen (14) days of the entry of judgment in the action with respect to which the services were rendered. At a minimum, the motion shall specify:

(A) The applicable judgment and the statutory or contractual authority entitling the party to the award; and

(B) The amount of attorneys' fees and related non-taxable expenses sought or a fair estimate of such amount.

At the time of filing the motion, counsel need not file a memorandum of points and authorities, as required by Rule 7.2, Local Rules of Civil Procedure or the supporting documentation, as required by paragraph (d) of this Local Rule.

(2) Memorandum in Support. Unless otherwise ordered by the Court, the memorandum of points and authorities in support of a motion for award of attorneys' fees, and all supporting documentation as required by paragraph (d) of this Local Rule, shall be filed and served within sixty (60) days of the entry of judgment in the action with respect to which the services were rendered.

(3) Responsive and Reply Memoranda. Unless otherwise ordered by the court, the opposing party may file and serve a responsive memorandum to the motion for award of attorneys' fees and related non-taxable expenses, or any portion thereof, within fifteen (15) days after service of the memorandum in support. Thereafter, the moving party, unless otherwise ordered by the court, shall have ten (10) days after service of the responsive memorandum to file a reply memorandum if that party so desires.

(4) **Computation of Time.** The time periods prescribed in this Local Rule are to be computed in accordance with Rule 6, Federal Rules of Civil Procedure.

(c) **Content of Memorandum in Support of Motion for Award of Attorneys' Fees and Related Non-Taxable Expenses.** The memorandum of points and authorities in support of a motion for award of attorneys' fees and related non-taxable expenses shall include a discussion of the following matters with appropriate headings and in the order listed below:

(1) **Eligibility.** This section must specify the judgment and cite the applicable statutory or contractual authority upon which the movant seeks an award of attorneys' fees and related non-taxable expenses. This section also must set forth a description of the nature of the case and must identify the claims or defenses as to which the party prevailed and the claims or defenses as to which the party did not prevail. Counsel should cite the relevant legal authority governing the standard by which the court should determine eligibility.

(2) **Entitlement.** This section must discuss the applicable factors deemed relevant in determining whether attorneys' fees and related non-taxable expenses should be allowed, with citation(s) to the relevant legal authority. If the moving party claims entitlement to fees for preparing the motion and memorandum for award of attorneys' fees and related non-taxable expenses, such party also must cite the applicable legal authority supporting such specific request.

(3) **Reasonableness of Requested Award.** This section should discuss, as appropriate, the various factors bearing on the reasonableness of the requested attorneys' fee award, including, but not limited to, the following:

(A) The time and labor required of counsel;

(B) The novelty and difficulty of the questions presented;

(C) The skill requisite to perform the legal service properly;

(D) The preclusion of other employment by counsel because of the acceptance of the action;

(E) The customary fee charged in matters of the type involved;

(F) Whether the fee contracted between the attorney and the client is fixed or contingent;

(G) Any time limitations imposed by the client or the circumstances;

(H) The amount of money, or the value of the rights, involved, and the results obtained;

(I) The experience, reputation and ability of counsel;

(J) The "undesirability" of the case;

(K) The nature and length of the professional relationship between the attorney and the client;

(L) Awards in similar actions; and

(M) Any other matters deemed appropriate under the circumstances.

(d) **Supporting Documentation.** Unless otherwise ordered, the following documentation shall be attached to each memorandum of points and authorities filed in support of a motion for award of attorneys' fees and related non-taxable expenses:

(1) **A Statement of Consultation.** No motion for award of attorneys' fees will be considered unless a separate statement of the moving counsel is attached to the supporting

memorandum certifying that, after personal consultation and good faith efforts to do so, the parties have been unable to satisfactorily resolve all disputed issues relating to attorneys' fees or that the moving counsel has made a good faith effort, but has been unable, to arrange such conference. The statement of consultation shall set forth the date of the consultation, the names of the participating attorneys and the specific results or shall describe the efforts made to arrange such conference and explain the reasons why such conference did not occur.

(2) **Fee Agreement.** A complete copy of any written fee agreement, or a full recitation of any oral fee agreement, must be attached to the supporting memorandum. If no fee agreement exists, then counsel must attach a statement to that effect.

(3) **Task-Based Itemized Statement of Fees and Expenses.** A task-based itemized statement of time expended and expenses incurred shall be prepared in accordance with paragraph (e) of this Local Rule and shall be attached to the supporting memorandum. Counsel may seek leave of court to file such statement under seal if deemed necessary to prevent the disclosure of information protected by the attorney-client privilege and attorney work-product doctrine.

(4) **Affidavit.** The supporting memorandum must be accompanied by an affidavit of moving counsel which, at a minimum, sets forth the following:

(A) **Background.** A brief description of the relevant qualifications, experience and case-related contributions of each attorney for whom fees are claimed.

(B) **Reasonableness of Rate.** A brief discussion of the terms of the written or oral fee agreement, if any.

This section shall include a statement as to whether the client has paid any fees or expenses pursuant to any such fee agreement and, if so, a statement of the amount paid and a description of the nature of the services for which payment was made, the time involved in such services and the identity of the person performing such services. As appropriate, this section also should discuss the method by which the customary charges were established, the comparable prevailing community rate or other indicia of value of the services rendered for each attorney for whom fees are claimed.

(C) **Reasonableness of Time Spent and Expenses Incurred.** In this section the affiant must state that the affiant has reviewed and has approved the time and charges set forth in the task-based itemized statement and that the time spent and expenses incurred were reasonable and necessary under the circumstances. This section also must demonstrate that the affiant exercised "billing judgment." The affiant should identify all adjustments, if any, which may have been made, and specifically, should state whether the affiant has eliminated unnecessary, duplicative and excessive time, deleted certain categories of time or expense entries and/or reduced the amount charged for a particular type of expense such as facsimile or photocopy charges.

(5) Any other affidavits or evidentiary matter deemed appropriate under the circumstances or required by law.

(e) **Task-Based Itemized Statement of Attorneys' Fees and Related Non-Taxable Expenses.** Unless otherwise ordered, the itemized account of the time expended and expenses incurred shall be in the format described in this Local Rule.

(1) **Format.** The itemized statement for legal services rendered shall reflect, in chronological order, the

following information:

(A) The date on which the service was performed;

(B) The time devoted to each individual unrelated task performed on such day;

(C) A description of the service provided; and

(D) The identity of the attorney, paralegal, or other person performing such service.

(2) **Description of Services Rendered.** The party seeking an award of fees must adequately describe the services rendered so that the reasonableness of the charge can be evaluated. In describing such services, however, counsel should be sensitive to matters giving rise to issues associated with the attorney-client privilege and attorney work-product doctrine, but must nevertheless furnish an adequate nonprivileged description of the services in question. If the time descriptions are incomplete, or if such descriptions fail to adequately describe the service rendered, the court may reduce the award accordingly. Explanatory examples are set forth below.

(A) **Telephone Conferences.** This time entry must identify all participants and the reason for the telephone call.

Ex.: Telephone conference
with J. Doe (attorney
for Defendant Baker) re
response to settlement
proposal and further
negotiations.

(B) **Legal Research.** This time entry must identify the specific legal issue researched and, if appropriate, should identify the pleading or document the preparation of which occasioned the conduct of the research.

Time entries simply stating "research" or "legal research" are inadequate and the court may reduce the award accordingly.

Ex.: Work on motion for
 summary judgment
 including (1) legal
 research re statute of
 limitations applicable
 to Title VII cases and
 (2) f a c t u a l
 i n v e s t i g a t i o n
 pertaining to claimed
 discrimination.

(C) **Preparation of Pleadings and Other Papers.**

This time entry must identify the pleading, paper or other document prepared and the activities associated with its preparation.

Ex.: Prepare first amended
 complaint including
 factual investigation
 underlying newly
 asserted Lanham Act
 claim and legal
 research related to
 elements of such claim.

(D) **Travel Time.** Ordinarily air travel time should not be charged. If services were performed during such time, then describe such services rather than charging for the travel time.

(3) **Description of Expenses Incurred.** In a separate portion of the itemized statement, identify each related non-taxable expense with particularity. Counsel should attach copies of applicable invoices, receipts and/or disbursement instruments. Failure to itemize and verify costs may result in their disallowance by the court.

(f) **Responsive Memorandum.** The responsive memorandum of points and authorities in opposition to a motion for award of

attorneys' fees and related non-taxable expenses shall identify with specificity all disputed issues of material fact and shall separately identify each and every disputed time entry or expense item. The respondent may attach controverting affidavits.

(g) **Discovery.** Discovery shall not be conducted in connection with a motion for award of attorneys' fees and related non-taxable expenses, unless ordered by the court upon motion and good cause shown.

(h) **Evidentiary Hearing.** The court in its discretion or upon motion may set an evidentiary hearing on a motion for award of attorneys' fees and related non-taxable expenses to resolve serious disputes involving material issues of fact that compromise the award. In all other cases, the court will determine the appropriate award, if any, of attorneys' fees and related non-taxable expenses without an evidentiary hearing.

(i) **Class Action Settlements.** Notice of the amount of any attorneys' fees and related non-taxable costs, or fair estimate thereof, to be sought in connection with any action certified as a class action pursuant to Rule 23, Federal Rules of Civil Procedure shall be given to all class members at the time, and in accordance with, the notice provided to the class members given pursuant to Rule 23(e), Federal Rules of Civil Procedure.

(j) **Establishment of Fee Committee, Appointment of Special Master - Class Actions.** This section addresses attorneys' fees to be awarded under the equitable or common fund doctrine, and in any action certified as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

(1) In such cases, the court may appoint a Fee

Committee, with such powers as the Court prescribes, to make recommendations on fees and expenses for all attorneys submitting an application for attorneys' fees. Members of the Fee Committee shall be paid for their services and expenses incurred out of the fund from which the attorneys' fees are to be paid, on such basis as may be ordered by the court.

(2) Alternatively, the court may, in its discretion, appoint a special master for this purpose, under and pursuant to the provisions of Rule 53 of the Federal Rules of Civil Procedure.

(3) The Fee Committee or Master may be appointed following:

(A) The court's preliminary approval of a proposed class settlement in accordance with Rule 23(e) of the Federal Rules of Civil Procedure; or

(B) The entry of a final judgment, or a judgment made final by Rule 54(b) of the Federal Rules of Civil Procedure; or

(C) The entry of an appealable order which gives rise to an entitlement to attorneys' fees.

(4) The membership of a Fee Committee appointed by the court shall consist of three persons, at least two of whom shall be attorneys. All attorneys appointed as members of a Fee Committee shall be members of the bar of this court. A committee member may not have either an interest in the outcome of the proceeding or have represented any party in the litigation.

(5) The Fee Committee or Master shall have authority to contact any attorney whose fee application is under consideration and may conduct hearings as the Fee Committee or Master may deem necessary.

(6) Every application for attorneys' fees in cases governed by this paragraph (j) shall include, at a minimum, the information required by paragraphs (c), (d) and (e) of this Local Rule and, in addition thereto, shall include the following:

(A) A narrative statement of the general contributions made by the applicant's firm to the prosecution of the litigation;

(B) An identification of any committees, task forces or other organizational groups formed in connection with the litigation upon which the applicant served, and a description of the role played by the applicant in the work of that committee or group; and

(C) Such supplemental information or data as shall be required by any Fee Committee or Master appointed by the court to review such application.

(7) At the conclusion of its work, the Fee Committee or Master shall submit a written report and recommendation to the court, setting forth, *inter alia*, the following:

(A) A description of the procedures employed by the Fee Committee or Master;

(B) A description of the standards adopted for reviewing applications for attorneys' fees, and for calculating recommended awards;

(C) A description of the pertinent factors involved in the litigation which were considered by the Fee Committee or Master in reviewing applications and arriving at recommendations to the court; and

(D) Specific recommendations as to the amount of fees to be awarded to each application.

(8) Unless otherwise ordered by the court, the

recommendations of the Fee Committee or Master shall be recited in the notice provided to the class members advising of the court's preliminary approval of any proposed settlement, the date scheduled for any hearing on the award of attorneys' fees, costs and expenses, and the right of the class membership to participate in any such hearing.

(9) Following the hearing, the court shall enter its order adopting, modifying or rejecting, in whole or in part, the recommendation of the Fee Committee or the Master.

F.R.CIV.P. 55. Default
(NO LOCAL RULE)

F.R.CIV.P. 56. Summary Judgment

LRCiv 56.1

MOTIONS FOR SUMMARY JUDGMENT

(a) Any party filing a motion for summary judgment shall set forth separately from the memorandum of law, and in full, the specific facts on which that party relies in support of the motion. The specific facts shall be set forth in serial fashion and not in narrative form. As to each fact, the statement shall refer to a specific portion of the record where the fact may be found (i.e., affidavit, deposition, etc.). Any party opposing a motion for summary judgment must comply with the foregoing in setting forth the specific facts, which the opposing party asserts, including those facts which establish a genuine issue of material fact precluding summary judgment in favor of the moving party. In the alternative, the movant and the party opposing the motion shall jointly file a stipulation signed by the parties setting forth a statement of the stipulated facts if the parties agree there is no genuine issue of any material fact. As to any stipulated facts, the parties so stipulating may state that their stipulations are entered into only for the purposes of the motion for summary judgment and are not intended to be otherwise binding.

(b) Notwithstanding the provisions of Rule 7.2 (c), (d), and (f), Local Rules of Civil Procedure, the opposing party shall, unless otherwise ordered by the Court, have thirty (30) days after service within which to serve and file a responsive memorandum in opposition; the moving party, unless otherwise ordered by the Court, shall have fifteen (15) days after service of the responsive memorandum to file a reply memorandum. If oral argument is scheduled pursuant to Rule

7.2(f), Local Rules of Civil Procedure, the time of hearing shall be set so as to give each party sufficient time to comply with these Local Rules and to allow the Court at least ten (10) days additional time prior to the hearing.

LRCiv 56.2

ORAL ARGUMENTS; MOTIONS FOR SUMMARY JUDGMENT

With regard to oral arguments on motions for summary judgment, see Rule 7.2(f), Local Rules of Civil Procedure.

F.R.CIV.P. 57. Declaratory Judgments
(NO LOCAL RULE)

Rule 58. Entry of Judgment

LRCiv 58.1

JUDGMENTS

(a) **Entry of Judgment.** Judgments will be entered in accordance with Rule 58, Federal Rules of Civil Procedure. If the judgment is one which requires settling by the District Judge or Magistrate Judge, and if such judgment is approved as to form by opposing counsel, the judgments may thereupon be signed by the District Judge or Magistrate Judge. If the adversary does not approve the form, the matter shall proceed to final settlement as if it were a finding as specified in Rule 52.1, Local Rules of Civil Procedure. Any default judgment which requires the signature of the Court shall be submitted by the person obtaining the judgment.

(b) **Interest on Award of Money.** When a judgment provides for an award of money, the form of judgment prepared must provide a space wherein the rate of interest can be entered by the Court on the date of entry at the rate then authorized pursuant to 28 U.S.C. §1961 (1). If a rate of interest other than provided for by 28 U.S.C. §1961 (a) is required by contractual agreement, other statutory requirement, or by stipulation of the parties, the amount will be affirmatively stated in the judgment.

F.R.CIV.P. 59. New Trials; Amendment of Judgments
(NO LOCAL RULE)

F.R.CIV.P. 60. Relief From Judgment or Order
(NO LOCAL RULE)

F.R.CIV.P. 61. Harmless Error
(NO LOCAL RULE)

F.R.CIV.P. 62. Stay of Proceedings To Enforce a Judgment
(NO LOCAL RULE)

F.R.CIV.P. 63. Inability of a Judge to Proceed
(NO LOCAL RULE)

VIII. Provisional and Final Remedies

F.R.CIV.P. 64. Seizure of Person or Property
(NO LOCAL RULE)

F.R.CIV.P. 65. Injunctions
(NO LOCAL RULE)

F.R.CIV.P. 65.1. Security Proceedings Against Sureties

LRCiv 65.1.1

***EX PARTE* RESTRAINING ORDERS**

Ex parte restraining orders shall only issue in accordance with Rule 65, Federal Rules of Civil Procedure.

LRCiv 65.1.2

SURETY BONDS AND UNDERTAKINGS

(a) Surety in Form Provided by State's Rules.

Whenever by statute or rule of this Court surety is required to be given for any purpose by any party, such surety shall be in the form and manner provided for similar surety in the state courts under the statutes and rules of Arizona.

(b) Restrictions on Persons Accepted as Sureties. No Clerk, Marshal, member of the bar, or other officer of the Court, will be accepted as surety on any bond or undertaking in any action or proceeding in this Court.

(c) Acceptance of Cash, Bonds, or Notes. The Clerk may accept cash or, to the extent and in the manner permitted by 31 U.S.C. §9303, use of Government obligations instead of surety bonds.

(d) Clerk's Authority to Approve. The Clerk is authorized to approve any surety required for any purposes unless the statute expressly requires the approval of the Court therefor.

F.R.CIV.P. 66. Receivers Appointed by Federal Courts
(NO LOCAL RULE)

F.R.CIV.P. 67. Deposit in Court

LRCiv 67.1

INVESTMENT OF FUNDS ON DEPOSIT IN THE REGISTRY ACCOUNT

The following procedure shall govern deposits into the registry of the Court in all civil actions.

(a) Receipt of Funds.

(1) Unless the statute requires the deposit of funds without leave of Court, no money shall be sent to the Court or its officers for deposit into the Court's registry without a Court order signed by the presiding Judge in the case or proceeding.

(2) Unless provided for elsewhere in this Local Rule, all money ordered to be paid into the Court or received by its officers in any case pending or adjudicated shall be deposited with the Treasurer of the United States in the name and to the credit of this Court pursuant to 28 U.S.C. 2041 through depositories designated by the Treasury to accept such deposit on its behalf.

(3) The party making the deposit or transferring funds to the Court's registry shall serve the order permitting the deposit or transfer on the Clerk or the Chief Deputy Clerk, and upon the Financial Deputy.

(4) Upon making the deposit, a "Notice of Deposit" must be filed with the Court.

(b) Investment of Registry Funds.

(1) All funds deposited into the registry of the Court will be placed in some form of interest bearing account. Unless otherwise ordered, the Court Registry Investment System (CRIS), administered through the United States District Court for the Southern District of Texas, shall be the only investment mechanism authorized.

(2) Under the CRIS, monies deposited in each case under (a)(1) will be "pooled" together with those on deposit with the Treasury to the credit of other courts in the Court Registry Investment System and used to purchase Treasury Securities which will be held at the Federal Reserve Bank of the Dallas/Houston Branch, in a Safekeeping account in the name and to the credit of the Clerk, United States District Court for the Southern District of Texas, hereby designated custodian for the Court Registry Investment System.

(3) An account for each case will be established in the CRIS titled in the name of the case giving rise to the investment in the system. Income received from fund investments will be distributed to each case based on the ratio each account's principal and income total has to the aggregate principal and income total in the fund each week. Weekly reports showing the income earned and the principal amounts contributed in each case will be prepared and distributed to each court participating in the CRIS and made available to litigants and/or their counsel.

(c) Registry Investment Fee.

(1) Pursuant to the miscellaneous fee schedule established by the Judicial conference of the United States and as set forth in 28 U.S.C. § 1914, the Clerk will assess and deduct registry fees according to the formula promulgated by the Director of the Administrative Office of the United States Courts.

(2) No additional fee shall be assessed with respect to investments for which a fee has already been deducted prior to the establishment of the CRIS in this district.

F.R.CIV.P. 68. Offer of Judgment
(NO LOCAL RULE)

F.R.CIV.P. 69. Execution

LRCiv 69.1

EXECUTIONS

All executions issued by the Clerk of this Court shall, unless otherwise specially ordered, be returnable sixty (60) days from the date of such writ.

F.R.CIV.P. 70. Judgment for Specific Acts; Vesting Title
(NO LOCAL RULE)

F.R.CIV.P. 71. Process in Behalf of and Against Persons Not
Parties
(NO LOCAL RULE)

IX. Special Proceedings

F.R.CIV.P. 71A. Condemnation of Property

LRCiv 71A.1

LAND CONDEMNATION PROCEEDINGS

(a) **Separate Civil Actions.** For each tract, economic unit, or ownership for which the just compensation is required to be separately determined in a total lump sum, there shall be a separate civil action. The condemner's counsel shall make the initial determination of each tract, economic unit, or ownership for which just compensation is required to be separately determined, subject to review by the Court after filing. A single declaration of taking may incorporate one or more tracts, economic units, or ownerships.

(b) **Master File.** Where the United States files separate condemnation actions and a single Declaration of Taking relating to those separate actions, the Clerk will establish a Master File containing the initial complaint and the Declaration of Taking. The Master File shall be assigned to a Judge in accordance with Rule 3.8(a), Local Rules of Civil Procedure, and all other cases that are subject to the Declaration of Taking shall be assigned to that Judge without resorting to further assignment by automated random selection.

(c) **Incorporation by Reference.** In cases where a single Declaration of Taking covers multiple tracts, the United States shall file a "Notice of Related Condemnation Actions" in the Master File that will list all of the related condemnation actions. The Declaration of Taking will be deemed incorporated by reference into all of the cases listed in the notice of related condemnation actions.

(d) **Standard Form of Complaint.** A standard form of complaint (printed, photocopied, mimeographed, or otherwise

reproduced) may be used for each civil action filed to condemn a tract, economic unit, or ownership for which the issue of just compensation is required to be determined and which is the subject of the declaration of taking filed in a Master File.

(e) **Reference to Tract Number.** All pleadings shall contain a reference to the tract number assigned by the condemner, which is to be indicated immediately below the number of the action as prescribed by Rule 7.1, Local Rules of Civil Procedure.

F.R.CIV.P. 72. Magistrate Judges; Pretrial Orders

LRCiv 72.1

ASSIGNMENT OF MATTERS TO MAGISTRATE JUDGES

(a) **Civil Cases.** Upon the order of a District Judge, a civil case shall be referred by the Clerk of the Court to a full-time Magistrate Judge by automated random selection for the conduct of such pretrial conferences as are necessary, and for the hearing and determination of all or specific pretrial procedural and discovery motions in accordance with the provisions of 28 U.S.C. §636 (b)(1). In supplementary proceedings pursuant to Rule 69, Federal Rules of Civil Procedure, including garnishments and judgment-debtor examinations, the Clerk of the Court shall refer such matters to a full-time Magistrate Judge by automated random selection in addition to any assignment made to a District Judge.

(b) **Habeas Corpus, Other Post Conviction Petitions, and Prisoner and certain other Civil Rights Complaints.** All petitions for writs of habeas corpus, applications for post trial relief made by individuals convicted of criminal offenses, civil rights complaints by state or federal prisoners challenging conditions of their confinement, and all other civil actions to which a District Judge has been assigned shall be referred by the Clerk of the Court to a full-time Magistrate Judge according to Local Rules of Civil Procedure, Rules 3.4(b), 3.5(c), or by automated random selection. The referred Magistrate Judge shall proceed in accordance with the Rules Governing Section 2254 Cases in the United States District Court, or the Rules Governing Section 2255 Proceedings for the United States District Courts, as the case may be, and with 28 U.S.C. §636 (b)(1)(A) and (B).

LRCiv 72.2

OTHER DUTIES PRESCRIBED; FULL-TIME MAGISTRATE JUDGES***

(a) **Other Duties.** Subject to the Constitution and laws of the United States, the full-time Magistrate Judges in the District of Arizona shall perform the following duties:

(1) Assist the District Judges in the conduct of pretrial discovery proceedings in civil or criminal actions. A Magistrate Judge may hear and determine a procedural or discovery motion or other pretrial matter in a civil or criminal case other than the motions which are specified in 28 U.S.C. §636 (b)(1)(A). As to such specified motions so assigned, a Magistrate Judge shall, upon designation by a District Judge, submit to that District Judge a report containing proposed findings of fact and recommendations for disposition by the District Judge. In any motion in which the parties are seeking the sanctions provided for in Rule 37(b)(2)(A), (B), or (C), Federal Rules of Civil Procedure, if the Magistrate Judge is inclined to grant such requests the Magistrate Judge shall be limited to filing a report and recommendation with the District Court; if the Magistrate Judge is inclined to deny any such request, he or she may enter an order thereon. A full-time Magistrate Judge may, when designated by a District Judge, conduct any necessary hearings, including evidentiary hearings, or other proceedings arising in the exercise of the authority conferred by 28 U.S.C. §636 and by these Local Rules.

(2) Review petitions for writs of habeas corpus, applications for post-trial relief made by individuals convicted of criminal offenses, and civil rights complaints

*** Paragraph (a)(7) of this Local Rule applies to part-time as well as full-time Magistrate Judges in the District.

lodged or filed by prisoners challenging conditions of their confinement pursuant to 42 U.S.C. §1983, Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971), or otherwise, and all other civil rights claims relating to the investigation and prosecution of criminal matters or to correctional agencies and institutions in connection with their decisions or acts arising out of their custodial functions; make such orders as are necessary to obtain appropriate information which may be of assistance in determining the merits of any such writ or complaint; and submit reports and recommendations thereon to facilitate the decisions of the District Judge having jurisdiction over the case as to whether there should be a hearing. The authorization given the Magistrate Judge by this Local Rule shall include, but not be limited to, the entry of appropriate orders directing answers to complaints and petitions assigned to the Magistrate Judge by the Clerk of the Court or by a District Judge, and the submission to a District Judge proposed findings of fact and recommendations for the disposition of such case. A full-time Magistrate Judge is further authorized to conduct hearings preliminary to the submission of proposed findings of fact and recommendations to a District Judge.

(3) Issue subpoenas and writs of habeas corpus ad prosequendum and writs of habeas corpus ad testificandum or other orders necessary to obtain the presence of parties, witnesses, or evidence needed for court proceedings.

(4) Make determinations and enter appropriate orders pursuant to 28 U.S.C. §1915 with respect to any suit, action, or proceedings in which a request is made to proceed *in forma pauperis* consistent with federal law.

(5) Conduct pretrial conferences, settlement conferences, and related pretrial proceedings in civil and criminal cases.

(6) Conduct examinations of judgment debtors in accordance with Rule 69 of the Federal Rules of Civil Procedure.

(7) Issue orders and search warrants authorizing civil administrative and other examinations, inspections, searches, and seizures as permitted by law. This provision shall apply to part-time and full-time Magistrate Judges in the District.

(8) Perform such additional duties as are not inconsistent with the Constitution and laws of the United States as may be assigned by the Court pursuant to 28 U.S.C. §636(b).

(9) Perform the duties set forth in Chapter 176 of Title 28, United States Code, as assigned by the District Court pursuant to the Federal Debt Collection Procedures Act, 28 U.S.C. § 3008.

(10) Review and submit reports and recommendations on the following types of cases which come before the Court on a developed administrative record: (A) actions to review administrative determinations under the Social Security Act and related statutes; (B) actions to review the administrative award of licenses and similar privileges; and (C) civil service cases involving such matters as adverse actions, retirement questions, and reduction in force.

(11) Review petitions and submit recommendations to the Court in civil commitment cases arising under Title III of the Narcotic Rehabilitation Act 1966.

(12) Conduct voir dire examinations and select juries in civil and criminal cases by agreement of the parties.

(13) With the written consent of the parties, hear and determine all motions, conduct the trial, and enter findings of fact, conclusions of law, and final judgments in civil cases when specifically referred by a District Judge.

(14) Accept petit jury verdicts in civil and criminal cases in the absence of a District Judge and with consent of the parties.

(15) Conduct proceedings for the collection of civil penalties of not more than two hundred dollars (\$200) assessment under the Federal Boat Safety Act of 1971 in accordance with 46 U.S.C. §§4311(d) and 12309(c).

(16) Hold hearings and issue orders or reports and recommendations as may be appropriate in connection with garnishment proceedings.

LRCiv 72.3

OTHER DUTIES PRESCRIBED; ALL MAGISTRATE JUDGES

All Magistrate Judges in the District of Arizona shall perform the duties prescribed by 28 U.S.C §636 (a) (1) and (2). Unless circumstances dictate otherwise, a part-time Magistrate Judge shall, after compliance with Rule 5(b) of the Federal Rules of Criminal Procedure, set any required preliminary examination under Rule 5(c) of the Federal Rules of Criminal Procedure before a full-time Magistrate Judge located at the place where the case is to be tried.

**F.R.CIV.P. 73. Magistrate Judges; Trial by Consent and
Appeal**

LRCiv 73.1

**CONSENT OF PARTIES TO TRY CASES BEFORE A
U.S. MAGISTRATE JUDGE**

(a) **Consent to Exercise Jurisdiction by a United States Magistrate Judge.** Upon filing a complaint, the Clerk shall furnish the plaintiff a "Consent to Exercise of Jurisdiction by a United States Magistrate Judge" and sufficient additional copies of the Consent to be attached to the complaint for service by the plaintiff on each defendant.

(b) **Filing.** At such time as all parties have executed and filed a consent with the Clerk and the District Judge has determined that the case should be reassigned to a Magistrate Judge, an order of reassignment will be signed, unless the case has already been assigned to a Magistrate Judge.

(c) **Magistrate Judge Initials in Case Number.** The Clerk, by appropriate designation, will indicate on the civil docket that the matter has been reassigned to a particular Magistrate Judge. When a case has been reassigned to a Magistrate Judge, all further pleadings and other documents will bear the Magistrate Judge's initials.

(d) **Assignment of Cases by Automated Random Selection.** The parties may not consent to trial before a particular Magistrate Judge. Cases will be assigned within each division equally among the Magistrate Judges of the division by the Clerk (or by the deputy designated by the Clerk) by automated random selection and in such a manner so that neither the Clerk nor any parties or their attorneys shall be able to make a deliberate choice for a particular case. The cases so assigned shall remain with the Magistrate Judge to whom

assigned unless otherwise ordered by the Court.

F.R.CIV.P. 74. Method of Appeal From Magistrate Judge to District Judge Under Title 28, U.S.C. § 636(c)(4) and Rule 73(d) (Abrogated)
(NO LOCAL RULE)

F.R.CIV.P. 75. Proceedings on Appeal From Magistrate Judge to District Judge Under Rule 73(d) (Abrogated)
(NO LOCAL RULE)

F.R.CIV.P. 76. Judgment of the District Judge on the Appeal Under F.R.CIV.P. 73(d) and Costs (Abrogated)
(NO LOCAL RULE)

X. District Courts and Clerks
F.R.CIV.P. 77. District Courts and Clerks

LRCiv 77.1

LOCATIONS

(a) **Locations.** The District covers the entire State of Arizona. However, for convenience the District is divided into three unofficial divisions, each named and comprising counties as follows:

Phoenix Division: Maricopa, Pinal, Yuma, La Paz, and Gila counties.

Prescott Division: Apache, Navajo, Coconino, Mohave, and Yavapai counties.

Tucson Division: Pima, Cochise, Santa Cruz, Graham, and Greenlee counties.

(b) **Schedule of Hearings.** The Court shall be open permanently at Phoenix and at Tucson and will sit at Prescott and such other places when and as the Court shall designate.

(c) **Place of Trial.** Unless otherwise ordered by the court, all civil and criminal cases founded on causes of action (1) arising in the Phoenix Division shall be tried in Phoenix, (2) arising in the Prescott Division shall be tried in Prescott, and (3) arising in the Tucson division shall be tried in Tucson. All civil and criminal cases founded on causes of action arising on the Tohono O'Odham Indian Reservation shall be tried in Tucson, unless otherwise ordered by the Court. All civil and criminal cases founded on causes of action arising on the San Carlos Indian Reservation shall be tried in Phoenix, unless otherwise ordered by the Court.

LRCiv 77.2

ORDERS AND JUDGMENTS GRANTABLE

OF COURSE BY THE CLERK

(a) **Authority.** The Clerk or any deputy authorized by the Court under standing order is authorized to sign and enter any order permitted to be signed by a Clerk under the Federal Rules of Civil Procedure, and particularly the following orders, without further direction by the Court:

(1) Orders specially appointing persons to serve process under the Federal Rules of Civil Procedure.

(2) Orders on stipulation of all counsel, approved in writing by the client being represented, for the substitution of attorneys.

(3) Orders withdrawing exhibits under Rule 79.1, Local Rules of Civil Procedure.

(4) Orders in stipulation noting satisfaction of an order for the payment of money, or withdrawing stipulations, or annulling bonds, or exonerating sureties, or setting aside a default.

(5) Entering judgments or verdicts or decisions of the Court in circumstances authorized in Rule 58, Federal Rules of Civil Procedure; entering judgments by default in the circumstances authorized in Rule 55(b)(1), Federal Rules of Civil Procedure; and entering judgments pursuant to offers of judgment and acceptances thereof in the circumstances authorized in Rule 68, Federal Rules of Civil Procedure.

(6) Any other order which, under Rule 77(c) of the Federal Rules of Civil Procedure, does not require special direction by the Court.

(7) Orders authorizing the filing, without payment of fees, of prisoner civil complaints and habeas corpus

petitions providing the affidavit *in forma pauperis* of the complainant or petitioner conforms to the requirements of Local Rules of Civil Procedure Rules 3.4(a) or 3.5(b) as appropriate.

(b) **Suspension, Altered, or Rescinded by the Court.**

Any order so entered may be suspended, altered, or rescinded by the Court for cause shown, upon such terms and within such time limits as may be established by any applicable rule or procedure.

(c) **Attachment and Garnishment.** The Clerk may issue a writ of attachment and garnishment in the circumstances and in the manner provided by the laws of the State of Arizona.

LRCiv 77.3

FEES FIXED BY THE CLERK

(a) **Payment and Schedule of Fees.** No act shall be performed by the Clerk for which a fee is required except on payment thereof.

(b) **Fee Deposit.** Where services are required to be performed by the Clerk for which fees cannot be definitely fixed in advance, the Clerk may require a fee deposit in such amount as in his or her opinion will be necessary to cover the anticipated expense.

LRCiv 77.4

NOTICE OF ORDERS

(a) **Notification of Adversary.** It shall be the duty of counsel obtaining any order in the absence of his or her adversary, except in cases of default by the adversary, to notify that adversary of the substance of the order, and, unless otherwise ordered by the Court, any order obtained where notice thereof is required shall be inoperative until such notice is given.

(b) **Waiver of Requirement.** When an order is made pursuant to a written stipulation of the parties or their attorneys or when an order is made in open court in the presence of the parties or their attorneys, if no request is made that notice of the entry of the order be mailed by the Clerk, the mailing of such notice as required by Rule 77(d), Federal Rules of Civil Procedure, shall be deemed waived by such parties.

F.R.CIV.P. 78. Motion Day
(NO LOCAL RULE)

**F.R.CIV.P. 79. Books and Records Kept by the Clerk
and Entries Therein**

LRCiv 79.1

CUSTODY AND DISPOSITION OF EXHIBITS AND SEALED DOCUMENTS

(a) **Retained by Party or Attorney.** All exhibits offered by any party in civil or criminal proceedings, whether or not received as evidence, shall be retained after trial by the party or attorney offering the exhibits, unless otherwise ordered by the Court.

(b) **Transmitted on Appeal.** In the event an appeal is prosecuted by any party, each party to the appeal shall promptly file with the Clerk any exhibits to be transmitted to the appellate court as part of the record on appeal. Those exhibits not transmitted as part of the record on appeal shall be retained by the parties who shall make them available for use by the appellate court upon request.

(c) **Notice to Remove Exhibits.** If any party, having received notice from the Clerk concerning the removal of exhibits, fails to do so within thirty (30) days from the date of such notice, the Clerk may destroy or otherwise dispose of those exhibits.

(d) **Sealed Documents - Generally.** Unless otherwise ordered by the Court, any sealed document, paper, case file or thing in any action where final judgment or final disposition occurred in 1990 or thereafter, will be subject to the custody and disposition processes according to (e) or (f), below, as applicable.

(e) **Sealed Documents - Actions in Which No Trial Commenced.** Unless otherwise ordered by the Court, any document, paper, case file or thing filed under seal in any action for which no trial commenced shall be eligible for

destruction no less than 23 years from the date of entry of final judgment or final disposition. The seal will be vacated without further action by the Court at the time of destruction.

(f) **Sealed documents - Actions in Which the Case Was Terminated During or After Trial.** Unless otherwise ordered by the Court, any document, paper, case file or thing filed under seal in any action for which a trial commenced shall be unsealed without further action by the Court 23 years from the date of entry of final judgment or final disposition, and will remain stored as a permanent record. This Local Rule further applies to all cases consolidated pursuant to Rule 65(a), Federal Rules of Civil Procedure.

The following types of cases will be exempt from this practice:

- Sexual abuse cases filed pursuant to 18 U.S.C. § 3509.
- Juvenile cases, unless the record has been expunged.

F.R.CIV.P. 80. Stenographer; Stenographic Report or
Transcript as Evidence

(NO LOCAL RULE)

XI. General Provisions

F.R.CIV.P. 81. Applicability in General

(NO LOCAL RULE)

F.R.CIV.P. 82. Jurisdiction and Venue Unaffected

(NO LOCAL RULE)

F.R.CIV.P. 83. Rules by District Courts; Judge's Directives

LRCiv 83.1

ATTORNEYS

(a) **Admission to the Bar of this Court.** Admission to and continuing membership in the bar of this Court is limited to attorneys who are active members in good standing of the State Bar of Arizona.

Attorneys may be admitted to practice in this District upon application and motion made in their behalf by a member of the bar of this Court.

Every applicant shall first file with the Clerk a statement on a form provided by the Clerk setting out the applicant's place of birth, principal office address and city and state of principal residence, the courts in which the applicant has been admitted to practice, the respective dates of admissions to those courts, whether the applicant is active and in good standing in each, and whether the applicant has been or is being subjected to any disciplinary proceedings.

Motions for admission will be entertained upon the convening of the Court at the call of the law and motion calendar. The applicant must be personally present at the time and, if the motion is granted, shall be admitted upon being administered the following oath by the Clerk or a District Judge:

"I solemnly swear (or affirm) that I will support the Constitution of the United States; that I will bear true faith and allegiance to the Government of the United States; that I will maintain the respect due to the courts of justice and judicial officers; and that I will demean myself as an attorney, counselor, and solicitor of this Court uprightly."

Thereafter, before a certificate of admission issues, the applicant shall pay an admission fee of one hundred eighty dollars (\$180.00) to the Clerk, U.S. District Court.

(b) **Practice in this Court.** Except as herein otherwise provided, only members of the bar of this Court shall practice in this District.

(1) U.S. Government Attorneys. Any attorney representing the United States Government in an official capacity, or who is employed by the office of the Federal Public Defender in an official capacity, and is admitted to practice in another U.S. District Court may practice in this District in any matter in which the attorney is employed or retained by the United States during such period of federal service. Attorneys so permitted to practice in this Court are subject to the jurisdiction of this Court to the same extent as members of the bar of this Court.

(2) Tribal Attorneys. Any attorney representing a tribal government entity in a full time official capacity may practice in this District in any matter in which the attorney is employed or retained by the tribal government entity during such period of tribal service provided the attorney is a member of a state bar. The attorney may apply to this district court under paragraph 3, pro hac vice. Attorneys so permitted to practice in this Court are subject to the jurisdiction of this Court to the same extent as members of the bar of this Court.

(3) *Pro Hac Vice.* An attorney who is admitted to practice in another U.S. District Court, and who has been retained to appear in this Court may, upon written application and in the discretion of the Court, be permitted to appear and participate in a particular case. Unless authorized by the

Constitution of the United States or an Act of Congress, an attorney is not eligible to practice pursuant to this subparagraph (b) (3) if any one or more of the following apply: (i) the attorney resides in Arizona, (ii) the attorney is regularly employed in Arizona, or (iii) the attorney is regularly engaged in the practice of law in Arizona. The pro hac vice application shall be presented to the Clerk and shall state under penalty of perjury (i) the attorney's principal office address and city and state of principal residence as well as current telephone number, facsimile number and electronic mailing address, if any, (ii) by what courts the attorney has been admitted to practice and the dates of admissions, (iii) that the attorney is in good standing and eligible to practice in those courts, (iv) that the attorney is not currently suspended, disbarred or subject to disciplinary proceedings in any court, and (v) if the attorney has concurrently or within the year preceding the current application made any other pro hac vice applications to this Court, the title and number of each action in which such application was made, the date of each application, and whether each application was granted. The pro hac vice application shall also be accompanied by payment of a pro hac vice fee of one hundred dollars (\$100.00) to the Clerk, U.S. District Court and a current, original certificate of good standing from a federal court. If the pro hac vice application is denied, the Court may refund any or all of the fee paid by the attorney. If the application is granted, the attorney is subject to the jurisdiction of the Court to the same extent as a member of the bar of this Court.

(4) Certified Students. Students certified to practice under Rule 83.4, Local Rules of Civil Procedure, may

practice in this District as provided in that Rule.

(c) **Association of Local Counsel.** Nothing herein shall prevent any judicial officer from ordering that local counsel be associated in any case.

(d) **Disbarment or Suspension.** An attorney who, before admission or permission to practice pro hac vice has been granted, unless specially authorized by one of the judges, or during disbarment or suspension exercises any of the privileges of a member of this bar, or who pretends to be entitled to do so, is subject to appropriate sanctions after notice and opportunity to be heard.

(e) **Sanctions for Noncompliance with Rules or Failure to Appear.**

(1) When Appropriate. After notice and a reasonable opportunity to be heard, the Court upon its own initiative may impose appropriate sanctions upon the party, attorney, supervising attorney or law firm who without just cause:

(a) violates, or fails to conform to, the Federal Rules of Civil or Criminal Procedure, the Local Rules of Practice for the District, the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules and/or any order of the Court; or

(b) fails to appear at, or be prepared for, a hearing, pretrial conference or trial where proper notice has been given.

The Court may impose sanctions against a supervising attorney or law firm only if the Court finds that such supervising attorney or law firm had actual knowledge, or reason to know, of the offending behavior and failed to take corrective action.

(2) Sanctions; Generally. The Court may make such orders as are just under the circumstances of the case, and among others the following:

- (a) An order imposing fines;
- (b) An order imposing costs, including attorneys' fees;
- (c) An order that designated matters or facts shall be taken to be established for the purposes of the action;
- (d) An order refusing to allow the failing party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters or facts in evidence;
- (e) An order striking, in whole or in part, pleadings, motions or memoranda filed in support or opposition thereto; and
- (f) An order imposing sanctions as permitted by Rule 83.2, Local Rules of Civil Procedure, Disbarment, for violations of the applicable ethical rules, incorporated into these Local Rules by Rule 83.2(d), Local Rules of Civil Procedure. The Court may also refer the matter to the relevant bar association(s) for appropriate action.

For violations of form, sanctions will be limited generally to fines, costs or attorneys' fees awards. Local rules governing the form of pleadings and other papers filed with the Court include, but are not limited to, the provision of Rule 7.1, Local Rules of Civil Procedure. Attorneys' fees may only be assessed for a violation of a Local Rule when the Court finds

that the party, attorney, supervising attorney or law firm has acted in bad faith or has willfully disobeyed Court orders or rules.

(3) Sanctions; Repeated Violations in Civil Cases. If, in a civil case, the Court finds that an attorney, party, supervising attorney or law firm has committed repeated serious violations without just cause, such finding may result in the imposition of more serious sanctions, including but not limited to, increased fines, fines plus attorneys' fees and costs, contempt, or the entry of judgment against the offending party on the entire case. Judgment against the offending party will not be entered unless the Court also finds there are no other adequate sanctions available.

(4) Scope; Enforcement. Nothing in this Local Rule is intended to modify, or take the place of, the Court's inherent powers, contempt powers or the sanctions provisions contained in any applicable federal rule or statute. Further, nothing in this Local Rule is intended to confer upon any attorney or party the right to file a motion to enforce the provisions of this Local Rule. The initiation of enforcement proceedings under this Local Rule is within the sole discretion of the Court.

LRCiv 83.2

DISBARMENT

(a) **Authority.** Any attorney admitted or otherwise authorized to practice before this Court may be disbarred, disciplined, or have the order of appointment revoked after such hearing as the Court may in each particular instance direct.

(b) **Report of Action in Any Other Jurisdiction.** Any attorney admitted or otherwise authorized to practice before this Court who is disbarred or subjected to other disciplinary action in any other jurisdiction shall promptly report the matter to this Court.

(c) **Suspension by Such Action in Any Other Jurisdiction.** Where it is known to the Court that attorney admitted or otherwise authorized to practice before this Court has been suspended or disbarred from practice by any court of competent jurisdiction, that fact will be sufficient ground for the attorney's removal or suspension by this Court, and the attorney will be forthwith suspended from practice before this Court, and, unless, upon notice mailed to the attorney at the address shown in the Clerk's records, the attorney shows good cause to the contrary within forty (40) days, the attorney will be disbarred from practice in this Court.

(d) **Arizona Rules of Professional Conduct.** The "Rules of Professional Conduct," in the Rules of the Supreme Court of the State of Arizona, shall apply to attorneys admitted or otherwise authorized to practice before the United States District Court for the District of Arizona.

LRCiv 83.3

APPEARANCE BY ATTORNEY OR PARTY; NAME AND ADDRESS CHANGES; CONTROL OF CAUSE

(a) **Attorney of Record; Duties of Counsel.** Except as provided below, no attorney shall appear in any action or file anything in any action without first appearing as counsel of record. In any matter, even if it has gone to judgment, there must be a formal substitution or association of counsel before any attorney, who is not an attorney of record, may appear. An attorney of record shall be deemed responsible as attorney of record in all matters before and after judgment until the time for appeal or until there has been a formal withdrawal from or substitution in the case. Notwithstanding the provisions of paragraph (b) of this Local Rule, whenever a federal, state, county or municipal law office headed by a public officer who has appeared as counsel of record, or a private or public law firm that has been retained by a party and has appeared as counsel of record while remaining counsel of record wishes to substitute or associate an attorney who is a member of, associated with, or otherwise employed by that office or firm such substitution or association may be accomplished by timely filing a notice of substitution or association with the Clerk of the Court. The notice shall state the names of the attorneys who are the subjects of the substitution or association and the current address and e-mail address of the attorney substituting or associating. An occasional court appearance or filing of a pleading, motion or other document as associate counsel at the request of an

NOTE: Amended pursuant to General Order 05-17, dated June 29, 2005, and effective August 1, 2005.

attorney of record shall not require the filing of a notice of association.

(b) **Withdrawal and Substitution.** No attorney shall be permitted to withdraw or be substituted as attorney of record in any pending action except by formal written order of the Court, supported by written application setting forth the reasons therefor together with the name, last known residence and last known telephone number of the client, as follows:

(1) Where such application bears the written approval of the client, it shall be accompanied by a proposed written order and may be presented to the Court *ex parte*. The withdrawing attorney shall give prompt notice of the entry of such order, together with the name, last known residence and last known telephone number of the client, to all other parties or their attorneys.

(2) Where such application does not bear the written approval of the client, it shall be made by motion and shall be served upon the client and all other parties or their attorneys. The motion shall be accompanied by a certificate of the attorney making the motion that (A) the client has been notified in writing of the status of the case including the dates and times of any court hearings or trial settings, pending compliance with any existing court orders and the possibility of sanctions, or (B) the client cannot be located or for whatever other reason cannot be notified of the pendency of the motion and the status of the case.

(3) No attorney shall be permitted to withdraw as attorney of record after an action has been set for trial, (A) unless there shall be endorsed upon the application therefore,

NOTE: Amended pursuant to General Order 05-17, dated June 29, 2005, and effective August 1, 2005.

either the signature of an attorney stating that the attorney is advised of the trial date and will be prepared for trial, or the signature of the client stating that the client is advised of the time and date and has made suitable arrangements to be prepared for trial, or (B) unless the Court is otherwise satisfied for good cause shown that the attorney should be permitted to withdraw.

(c) **Applicability of Rules.**

(1) Anyone appearing before the court is bound by these Local Rules. Any reference in these Local Rules to 'attorney' or 'counsel' applies to parties not represented by an attorney unless the context requires otherwise.

(2) Appearance by Represented Party. Whenever a party has appeared by an attorney, that party cannot thereafter appear or act in that party's own behalf in the cause, or take any steps therein, unless an order of substitution shall first have been made by the Court after notice to the attorney of each such party, and to the opposite party. The attorney who has appeared of record for any party shall represent such party in the cause and shall be recognized by the Court and by all the parties to the cause as having control of the client's case, in all proper ways, and shall, as such attorney, sign all papers which are to be signed on behalf of the client, provided that the Court may in its discretion hear a party in open court, notwithstanding the fact that that party has appeared or is represented by an attorney.

(d) **Changes of Name, Affiliation, Address.** Any unrepresented party in an action pending in this District must

NOTE: Amended pursuant to General Order 05-17, dated June 29, 2005, and effective August 1, 2005.

file and serve a written notice advising if he or she has a change in name or address. Any attorney in an action pending in this District must file and serve a written notice advising if he or she has a change in name, firm name, address or e-mail address. The attorney's State Bar Attorney number must appear on such notification. The notice must be filed ten (10) days before the move becomes effective, and include all case numbers of all pending matters in which the unrepresented party or the attorney has appeared. An attorney whose name, address, e-mail address, firm name or address has changed must also update the information through the Electronic Case Filing System utility menu.

(e) ***Ex Parte* Presentations; Duty to Court.** All applications to a District Judge or Magistrate Judge of this Court for *ex parte* orders shall be made by an attorney of this Court or by an individual on that individual's own behalf. In the event that any *ex parte* matter or default proceeding has been presented to any District Judge, Magistrate Judge or judicial officer and the requested relief is denied for any reason, such matter shall not be presented to any other District Judge or Magistrate Judge or judicial officer without making a full disclosure of the prior presentation. Counsel should be governed by the provisions of ER 3.3 of the Rules of Professional Conduct, Rule 42, Rules of the Supreme Court of Arizona. For a failure to comply with the provisions of this Local Rule, the order or judgment made on such subsequent application may be vacated at any time as a fraud upon the Court.

NOTE: Amended pursuant to General Order 05-17, dated June 29, 2005, and effective August 1, 2005.

LRCiv 83.4

STUDENT PRACTICE RULE

(a) **Purpose.** The following Student Practice Rule is designed to encourage law schools to provide clinical instruction in litigation of varying kinds, and thereby enhance the training of lawyers in federal practice in this District.

(b) **Student Requirements.** An eligible student must:

- (1) Be duly enrolled in an American Bar Association (ABA) accredited law school;
- (2) Have successfully completed at least three (3) semesters of legal studies, or the equivalent;
- (3) Have knowledge of the Federal Rules of Civil and Criminal Procedure, Evidence, the Code of Professional Responsibility, and the Local Rules of Practice of this Court;
- (4) Be enrolled for credit in a law school clinical program at an ABA accredited law school which has been certified by the Court;
- (5) Be certified by the Dean of the Law School, or the Dean's designee, as being of good character and sufficient legal ability, and as being adequately trained, in accordance with subparagraphs 1-4 above, to fulfill his or her responsibilities as a legal intern to both client and the Court; and
- (6) Not accept personal compensation for legal services from a client or other source.

(c) **Program Requirements.** The program:

- (1) Must be a law school clinical practice program for credit in which a law school student obtains academic and practice advocacy training, utilizing law school faculty or adjunct faculty for practice supervision, including

experienced federal government attorneys or private practitioners;

(2) Must be certified by the Court;

(3) Must be conducted in such a manner as not to conflict with normal Court schedules;

(4) May accept compensation other than from a client, such as Criminal Justice Act (CJA) payments; and

(5) Must be a program which is either (A) subject to the provisions of A.R.S. §41-621 on insurance or self-insurance by the State of Arizona, or (B) has other malpractice coverage satisfactory to the Court.

(d) **Supervisor Requirements.** A supervising attorney must:

(1) Be a member of the State Bar of Arizona whose service as a supervising lawyer is approved by the dean of that law school in which the student is enrolled.

(2) Be admitted to practice in the Court in which the student is certified;

(3) Be present with the student at all times in Court, and at other proceedings in which testimony is taken, except as permitted in subparagraph (f)(4) of this Local Rule;

(4) Co-sign all pleadings or other documents filed with the Court;

(5) Supervise concurrently no more than ten (10) students carrying clinical practice as their entire academic program, with a proportionate increase in the number of students as their percentage of time devoted to clinical practice may be less;

(6) Assume full personal professional responsibility for student's guidance in any work undertaken and for the quality of a student's work, and be available for consultation

with represented clients;

(7) Assist and counsel the student in activities mentioned in this Local Rule, and review such activities with the student, all to the extent required for the proper practical training of the student, and the protection of the client; and

(8) Be responsible to supplement oral or written work of the student as necessary to ensure proper representation of the client.

(e) **Certification of Student, Program, and Supervisor.**

(1) Students.

(A) Certification by the Law School Dean shall be filed with the Clerk of the Court and, unless it is sooner withdrawn, shall remain in effect until expiration of eighteen (18) months.

(B) Certification to appear generally, or in a particular case, may be withdrawn by the Court at any time, in the discretion of the Court, and without any showing of cause.

(2) Program.

(A) Certification of a program by the Court shall be filed with the Clerk of the Court and shall remain in effect indefinitely unless withdrawn by the Court.

(B) Certification of a program may be withdrawn by the Court at the end of any academic year without cause, or at any time, provided notice stating the cause for such withdrawal is furnished to the Law School Dean and supervisor.

(3) Supervisor.

(A) Certification of a supervisor must be filed with the Clerk of the Court, and shall remain in effect indefinitely unless withdrawn by the Court.

(B) Certification of a program may be withdrawn

by the Court at the end of any academic year without cause, or at any time upon notice and a showing of cause.

(C) Certification of a supervisor may be withdrawn by the dean by mailing of notice to that effect to the Clerk of the Court.

(f) **Permitted Student Activities.** A certified student may, under the personal supervision of his or her supervisor:

(1) Represent any client including federal, state, or local government bodies and engage in the activities permitted hereunder only if the client on whose behalf the student is to act shall have approved in writing on a consent form available from the Clerk the performance of such acts by such certified student. In the case of criminal matters, the consent form necessary for a certified student to appear on behalf of the federal government or an agency thereof may be executed by the United States Attorney or authorized representative.

(2) Except as permitted in subparagraph (f)(4) of this Local Rule, a certified student may engage in the following activities on behalf of the office of the Federal Public Defender or private counsel in the defense of felonies only with the approval and under the direct and immediate supervision and in the personal presence of the supervising attorney or such attorney's designee:

(A) appearing at or taking depositions on behalf of the client, and

(B) appearing on behalf of the client in any trial, hearing, or other proceeding, before any District Judge or Magistrate Judge of the United States District Court for the District of Arizona, but only to the extent approved by such District Judge or Magistrate Judge;

(3) Engage in connection with matters of this Court, in other activities on behalf of his or her client in all ways that a licensed attorney may under the general supervision of the supervising lawyers; however, a student may make no binding commitments on behalf of a client absent prior client and supervisor approval;

(4) A certified student may engage in the following acts on behalf of a government agency as a representative of that agency without the personal appearance of the supervising attorney, but only if the supervising attorney or such attorney's designee is available by telephone or otherwise to advise the certified student.

(A) Appear in any action on behalf of a government agency or on behalf of the office of the Federal Public Defender or private counsel in the prosecution or defense of misdemeanors, but only subject to approval by the District Judge or Magistrate Judge presiding at hearing or trial in such action and upon written consent of the client. Documents or papers filed with the Court must be signed and read, approved, and co-signed by the supervising lawyer. The Court retains the authority to establish exceptions to such activities.

(B) Appear in any proceeding in actions brought solely under 42 U.S.C. Section 405(g) and Section 1395ff to review a final decision of the Secretary of Health and Human Services;

(C) Appear in any proceeding in actions to enforce collection on promissory notes involving federally insured loans and direct federal loans in which the prayer for relief is less than \$25,000.

(5) In all instances in which, under these Local

Rules, a certified student is permitted to appear in any trial, hearing, or other proceeding before any District Judge or Magistrate Judge of the United States District Court for the District of Arizona, the certified student shall, as a condition to such appearance, cause the filing of the consent form or present the consent form for filing to the District Judge or Magistrate Judge.

(6) Certified students whose supervising attorneys are not government attorneys or attorneys acting full time on behalf of the office of the Federal Public Defender shall satisfy not only the requirements of this Local Rule, but also the requirements imposed by the State Bar of Arizona rules governing the practical training of law students, as those rules may be amended from time to time.

LRCiv 83.5

PROHIBITION OF BIAS

Litigation, inside and outside the courtroom, in the United States District Court for the District of Arizona, must be free from prejudice and bias in any form. Fair and equal treatment must be accorded all courtroom participants, whether judges, attorneys, witnesses, litigants, jurors, or court personnel. The duty to be respectful of others includes the responsibility to avoid comment or behavior that can reasonably be interpreted as manifesting prejudice or bias toward another on the basis of categories such as gender, race, ethnicity, religion, disability, age, or sexual orientation.

LRCiv 83.6

SUSPENSION OF RULES

Upon application, or upon the Court's own motion, any Judge of this Court may suspend any of these Local Rules for good cause shown.

LRCiv 83.7

STIPULATIONS OF COUNSEL

(a) **Generally.** No agreement between parties or attorneys is binding, if disputed, unless it is in writing signed by the attorney of record or by the unrepresented party, or made orally in open court and on the record; provided, however, that in the interests of justice the Court shall have the discretion to reject any such agreement.

LRCiv 83.8

CONDUCT OF ATTORNEYS

(a) **Prohibition of Extrajudicial Statements.** A lawyer or law firm associated with a civil action shall not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, which a reasonable person would expect to be disseminated by means of public communication, if there is a reasonable likelihood that such dissemination will interfere with a fair trial and which relates to:

(1) evidence regarding the occurrence or transaction involved;

(2) the character, credibility, or criminal record of a party, witness or prospective witness;

(3) the performance or results of any examination or tests or the refusal or failure of a party to submit to such;

(4) his or her opinion as to the merits of the claims or defenses of a party except as required by law or administrative rules; or

(5) any other matter reasonably likely to interfere with a fair trial of the action.

(b) **Reference to Rule 57.2(f), Local Rules of Criminal Procedure.** In a widely publicized or sensational case, the Court, on motion of either party or on its own motion, may issue a special order similar to that provided for by Rule 57.2(f), Local Rules of Criminal Procedure.

LRCiv 83.9

AMENDMENT OF THE RULES OF PRACTICE

(a) Rules of Practice Advisory Committee.

(1) Appointment. The Chief Judge shall appoint members of a Rules of Practice Advisory Committee (Committee) to serve such terms as the Chief Judge designates. The Chief Judge will appoint a District Judge as the Chair of the Committee (Chair).

(2) Responsibilities. The Committee shall make reports and recommendations to the Court regarding the following matters:

(i) The consistency of the Rules of Practice (Local Rules) with the United States Constitution, Acts of Congress, the Federal Rules and General Orders of the Court; and

(ii) Proposed amendments to the Local Rules.

(b) Procedures.

(1) Submission of Proposals. Any person or organization may propose an amendment to the Local Rules. Proposals should be submitted to the Clerk of Court, marked to the attention of the Committee. Guidelines for submission of proposals are available from the Clerk of Court and are posted on the District's Internet website. For a proposal to become effective on December 1 of a given year, it must be submitted to the Clerk of Court by August 31 of the preceding year.

(2) Initial Consideration of Proposals. The Chair will convene the first meeting of the Committee in September to consider proposals. The Committee will review proposals for rejection, deferral or recommendation to the Court for consideration. The Chair will assign drafting responsibility to a Committee member of those proposals that will be

forwarded to the Court. The Committee will forward the final proposed amendments to the Court by February 28. The Court will decide whether to approve the proposed amendments for circulation to the bar and the public by April 30.

(3) Comment by the Bar and the Public. Proposed amendments approved by the Court will be distributed to the State Bar of Arizona and the local chapters of the Federal Bar Association, published in a local legal publication, made available to the public at each courthouse in the District, and posted on the District's Internet website. Comments from the bar and the public shall be submitted by June 30 to the Clerk of Court, marked to the attention of the Committee. The Committee will forward the comments, an evaluation of the comments and the final proposed amendments to the Court by August 15.

(4) Final Adoption. The Court will adopt, modify or reject the final proposed amendments by September 30. An amendment is effective as to all cases filed on or after December 1 of the year in which the amendment was adopted and may apply to pending cases to the extent it is practical and fair.

(5) Alteration of Timing and Procedure. For cause, the Court may alter the timing or procedures set forth in this Local Rule by General Order.

(c) **Emergency Amendments.** When the Court or the Committee determines there is an immediate need to implement an amendment, including a technical, clarifying or conforming amendment, the amendment may be adopted by the Court without prior comment by the bar or the public. The effective date of an emergency amendment is the date set forth by the Court in the General Order adopting the amendment. Amendments adopted

under this subsection will thereafter be circulated to the bar and the public for comment and reevaluated by the Committee and the Court for possible revision according to the deadlines set forth sections (b) (3) and (b) (4) of this Local Rule.

LRCiv 83.10

DISPUTE RESOLUTION

As early as the scheduling conference held under Rule 16(b), Fed. R. Civ. P., or at any time requested by the parties, the court may offer or parties may request to refer the action to a magistrate judge for the purpose of holding a timely settlement conference (mediation), minitrial, summary jury trial, early neutral evaluation, or other form of dispute resolution. The court may require the parties to participate in alternative dispute resolution only with respect to mediation and early neutral evaluation. 28 U.S.C. § 652(a). Alternative dispute resolution shall not be offered as a reason to delay the processing of the case as established in the Rule 16 scheduling order. This Local Rule is promulgated pursuant to 28 U.S.C. § 651(b) and 28 U.S.C. § 652(a).

F.R.CIV.P. 84. Forms

(NO LOCAL RULE)

F.R.CIV.P. 85. Title

(NO LOCAL RULE)

F.R.CIV.P. 86. Effective Date

(NO LOCAL RULE)